Committee on Appropriations
Subcommittee on Financial Services and General Government

Answers to Submitted Questions

- Election Assistance Commission
- Internal Revenue Service
- The Judiciary
- U.S. Postal Service
- Department of the Treasury
- Office of Management and Budget

U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

March 22, 2021

The Honorable Mike Quigley
Chairman, Subcommittee on Financial Services and General Government
House Committee on Appropriations
2000 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Quigley,

Thank you for the invitation to appear before members of the House Committee on Appropriations Subcommittee on Financial Services and General Government for your hearing on February 16, 2021, entitled, "Election Assistance Commission Oversight Hearing."

I appreciated the opportunity to testify about the work of the U.S. Election Assistance Commission (EAC) and the impact of election security and pandemic response grants provided to states by Congress. Last fall, election officials faced substantial challenges in conducting elections that were as safe as possible for in-person voters and addressing record levels of absentee/mail ballots. The essential Congressional funding, coupled with heroic efforts by our state and local election officials, helped a record number of Americans vote safely and securely.[1]

Our agency made great strides assisting officials as they prepared for unprecedented turnout during a global pandemic. In addition to managing grant distribution, the EAC developed updated guidance, hosted public forums, shared best practices, served underrepresented voters, helped recruit a new generation of poll workers, and educated the public about the dangers of mis- and disinformation. We are proud of our efforts in 2020 but know there is much more that must be done. With adequate funding, the EAC can do more to help safeguard the integrity of our nation's elections and instill public confidence in their outcomes.

I respectfully submit for the record the following responses to the Subcommittee's follow-up questions. This letter responds to the questions posed by the Chairman and Congresswoman Norma Torres. Unless otherwise noted, I am solely responsible for the answers to these questions and the responses do not necessarily reflect the views of my fellow EAC Commissioners.

The EAC looks forward to our continued work together. Please do not hesitate to contact me.

Sincerely,

Benjamin Hovland, Commissioner

[1] Preliminary data submitted for the Election Administration and Voting Survey (EAVS) reflects approximately 160 million Americans voted in November The uncertified data is subject to change before publication in June.

HEARING
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
HOUSE APPROPRIATIONS COMMITTEE
"ELECTION ASSISTANCE COMMISSION OVERSIGHT HEARING"
CHAIRMAN MIKE QUIGLEY QUESTIONS FOR THE RECORD
FOR
THE HONORABLE BENJAMIN HOVLAND
U.S. ELECTION ASSISTANCE COMMISSION

Disinformation and Election Security

Last year, Americans witnessed a concerning proliferation of disinformation and conspiracy theories aimed at undermining the integrity of our election system. I am interested in learning more about how EAC responded to those disinformation campaigns and would like to know what role EAC played regarding the certification of voting machines.

Question 1: *What has the EAC done to fight election disinformation campaigns aimed at sowing doubt about our elections? Please explain why these disinformation campaigns are detrimental to our democracy.*

Mis- and disinformation campaigns, whether from foreign or domestic sources, fundamentally threaten the integrity of our elections. Foreign adversaries use these campaigns to sow doubt about the electoral process and divide Americans. When misinformation arises from a domestic source, the self-inflicted wounds can be exploited by foreign adversaries to further undermine voter confidence. Ultimately, a lack of trust in the electoral system disenfranchises voters, who come to believe their vote no longer counts and their voice is no longer heard.

Election officials, the EAC, and other federal agencies work tirelessly to combat these attacks and to limit their impact. The goal of these efforts is to not only raise voter awareness about misinformation and disinformation, but also to increase Americans' media and social media literacy.

During 2020, the EAC prioritized voter education as a means of combatting both mis- and disinformation. In mid-October, the EAC launched Voter Education Week, encouraging voters to check their registration, learn about absentee and mail ballot options, find early voting information, and to make a plan to vote whether early or on Election Day.

This was the culmination of other efforts to promote trusted source information about participating in 2020. Voter registration is the first step in any plan to vote. The EAC was proud to partner with GSA to update and promote vote.gov, which focuses on voter registration information and deadlines. From January 1 to November 30, 2020 over 7.1 million people visited vote.gov, with over 282,000 visiting on National Voter Registration Day on September 22, 2020.

The EAC also expanded state-specific information included on its website. Over 1.2 million people from January 1 to November 3, 2020 visited eac.gov/vote for state voting information, making it the most visited page on the EAC's website last year. For all 50 states and the District of Columbia, the EAC provided links to the official state election page, local election office

directories, information on how to register to vote, how to look up your voter registration, absentee or mail voting information, polling location look up tools, and options to track your absentee or mail ballot. The links directed voters to the official state election office websites as the trusted sources for this information.

Joining forces with other organizations and agencies, the EAC sought to provide official sources for accurate information and counter unfounded claims. The EAC proudly participated in and promoted the "#trustedinfo2020" campaign by the National Association of Secretaries of State, which cautioned voters to rely on state and local election officials as trusted sources for election information. Collaborating with our partners at the Cybersecurity and Infrastructure Security Agency (CISA), the EAC also contributed to projects as part of the #Protect2020" effort.

The agency also held various roundtables, including a discussion on election night reporting to address the potential for fluctuations as officials tabulated different types of votes. These efforts helped support election officials as they faced extensive misinformation and disinformation campaigns along with health concerns due to COVID-19, a substantial increase in early and mail/absentee voting, and poll worker shortages. In response to concerns from election officials, the EAC established the first ever National Poll Worker Recruitment Day, which galvanized national recruitment efforts to alleviate concerns about a significant shortage in poll workers due to the pandemic. For many with doubts about the integrity of the voting process, nothing provides confidence like being part of administering the election. Serving as a poll worker can provide that front-line experience with the safeguards and protections that provide election officials with confidence in the accuracy and integrity of our elections.

Nevertheless, while significant progress has been made, the battle against mis- and disinformation is ongoing and will require a coordinated and determined effort to combat.

Question 2: *If a county has a system with voter verified paper ballots, can't we dispel concerns that voting machines have been hacked by hand counting the paper ballots?*

In short, yes, voter-verified paper ballots provide an opportunity to confirm election results either through a hand count or a post-election tabulation audit (PEAs). More broadly, PEAs ensure election voting tabulators are operating accurately and comply with regulations and internal policies. Since the 2000 presidential election and the enactment of the Help America Vote Act of 2002, PEAs have become a more frequently used tool for enhancing public confidence in election outcomes. In the past, Congress has appropriated competitive grants to expand the use of election audits across the U.S. These grants are administered by the EAC and we would welcome similar opportunities in the future.

PEAs are used to verify that ballots have been tabulated correctly. Traditional PEAs compare paper ballots to votes tabulated in a small percentage of precincts or on a small number of voting machines. The percentage is fixed in state law, and regardless of the margin of victory, the same number of ballots are reviewed. A risk-limiting audit (RLA) is a statistics-based audit technique that specifies the number of ballots that need to be audited based on the margin of victory and a pre-determined risk limit while also providing statistical confidence that an incorrect election result is not certified.

Most PEAs occur before an election is officially certified by a canvass board or chief election official. The frequency at which audits are conducted varies by state. Some states require an audit after every election; others require an audit only after federal elections. Most states require PEAs regardless of the outcome. In the November election, PEAs in Georgia and in specific counties of key battleground states like Arizona and Michigan ultimately confirmed election results and cleared the way for certification and provided additional reassurance that voters' ballots were counted, and the results were accurate.

The unanimous approval by EAC Commissioners of the Voluntary Voting System Guidelines (VVSG) 2.0 last month represents a move toward ensuring more paper ballots. The VVSG 2.0 also supports various audit methods with software independence to confirm the accuracy of the vote and increase voter confidence. With its adoption, manufacturers can begin designing and building voting machines according to these new guidelines.

CONGRESSWOMAN NORMA J. TORRES QUESTIONS FOR THE RECORD

1 *The convergence of postal delays and the necessity of mail-in ballots due to the pandemic disenfranchised many voters State deadlines that did not align with the reality of the mail system set up these voters to fail.*

- *What did the EAC learn from these issues with the postal service, and what does the EAC plan to do to ensure that state voting deadlines align with the realities of the USPS?*

The availability of absentee and mail ballots in 2020 allowed a record number of Americans to vote safely during the pandemic. Preliminary data submitted for the Election Administration and Voting Survey reflects approximately 90.2 million ballots were mailed by election offices to non-overseas voters in the November election.[2] Yet some voters faced practical challenges in returning their ballots. In many instances, high demand and tight deadlines left election officials with little time to process ballot requests and voters with insufficient time to postmark and/or return them.[3]

In Ohio, for example, the absentee ballot request deadline fell three days before Election Day. Voters had to return their ballots in person by Election Day or, if by mail, postmarked no later than the day before Election Day and received no later than 10 days after the election. The EAC, through its best practices clearinghouse function, developed guidance about realistic deadlines to help election officials plan absentee and mail ballot operations.[4] We will continue doing so in future elections.

The practical challenges of mail and absentee deadlines have underscored the importance of voter education. In response, the agency established Voter Preparation Week in mid-October. Along with multiple partners, the EAC encouraged voters to check their registration, learn about options and deadlines for absentee and mail ballots, find early voting information, and to make a plan to vote whether early or on Election Day.

- *What has the EAC already done to address this situation?*

Even before Americans grasped the scope of COVID-19's impact last March, the EAC worked closely with election officials to share best practices for absentee and mail ballot operations, including U.S. Postal Service delivery tools like mail ballot tracking technologies. The EAC also

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[2] The preliminary, uncertified data is subject to change prior to final publication of the EAVS report in June

[3] The U S. Postal Service reported that between October 26, 2020 and November 3, 2020, local coordinators processed 4 8 million ballot requests. U.S. POSTAL SERV., 2020 POST-ELECTION ANALYSIS: DELIVERING THE NATION'S ELECTION MAIL IN AN EXTRAORDINARY YEAR 14 (2021), https //about usps com/newsroom/national-releases/2021/usps_postelectionanalysis_1-12-21_georgia pdf. Overall, the U.S. Postal Service delivered 99.89% of ballots to election officials from voters within seven days. *Id* at 18 Ballot delivery time to voters averaged 2 1 days, while return time to election officials averaged 1.6 days *Id.*

[4] The U.S Postal Service likewise wrote to top state election officials in late May 2021 and July 2021 to address "structural incongruities between state-law election deadlines and the Postal Service's delivery standards" that risked disqualifying ballots. U S POSTAL SERV., *supra* note 3 at 10 It also launched a new voter education effort with a new election mail website, appointed a new executive director of Election Mail, and enhanced outreach and training efforts for field operations *See id.* at 10-12

established a page on its website with comprehensive COVID-19 resources for election administration, outreach, and security issues related to absentee and mail voting. Among our COVID-19 Resources was a "Vote-by-Mail/Absentee Voting Timeline," which detailed project management timelines from designing a ballot application to inbound ballot processing.

Other resources included an interview series with election officials who shared their plans for addressing the increased demand for absentee and mail ballots. The EAC also hosted two roundtables for election officials on "Lessons Learned from the 2020 Primary Elections," which included discussion of the problems faced navigating absentee and mail ballot voting and the solutions implemented.

The EAC also requested to meet with Postmaster General Louis DeJoy following his appointment and confirmation but did not receive a response. We did, however, host a roundtable in August, "UOCAVA and Accessibility Issues During the COVID-19 Pandemic," that included the USPS Director of Election and Political Mail Operations. Among our Joint COVID Working Groups Resources was also a document that the EAC led in authoring, "Lessons Learned from the 2020 Primaries," which discussed preparing for increased absentee or mail ballots and planning for processing timelines of those votes. Finally, election officials on EAC's Standards Board and Board of Advisors collaborate extensively with USPS directly in their states and communities and through national election organizations. These officials helped us develop absentee and mail-related resources, guidance, and best practices.

- *How can Congress help the EAC to develop a plan to ensure this does not happen again and that USPS guarantees on-time delivery of all domestic mail-in ballots sent before the Saturday before Election Day?*

As we saw in 2020, states would benefit from more consistent timelines in processing absentee and mail ballots. While state legislatures generally determine absentee and mail ballot deadlines, Congress continues to debate measures that could provide minimum standards. If passed, the EAC could develop additional guidance based on a common starting point.

Separately, consistent funding would provide state and local election officials with more certainty to plan for investments to better serve their voters. For absentee and mail ballot operations, this means reliable resources to budget for the purchase and maintenance of tools like automated letter openers and ballot tracking technology. Given adequate funding, the EAC would create additional best practices, resources, and training opportunities for election officials concerning absentee and mail ballots.

Additionally, as I mentioned during the hearing, Congressional funding directed toward the U.S. Postal Service creation of a uniform tracking mechanism for ballots across the country could assist election officials with the added costs of ballot tracking, solve many of the issues that traditionally arise with mail/absentee ballots, and help improve transparency and voter confidence.

Finally, robust and consistent funding could also allow election officials to budget for pre-paid postage, ballot drop boxes, and increased voter education about the absentee and mail ballot

process. In this way, Congress would help our agency develop a plan to work with the U.S. Postal Service and improve voter confidence in the integrity of our democratic process.

Financial Services and General Government Subcommittee
Internal Revenue Service Oversight Hearing

Witness:
The Honorable Charles P. Rettig, Commissioner of the Internal Revenue Service

Questions for the Record Submitted by Congressman Bishop

Economic Impact Payments

One of the more important coronavirus relief programs meant to help people through these difficult economic times, are the Economic Impact Payments sent directly to lower income folks. Those payments have been especially vital in communities of color, who have borne an outsized economic burden during this pandemic.

Unfortunately, the distribution of those payments was not without hiccup. While most received the money they were owed on time, approximately 15%, or 20 million Americans, experienced significant delays.

So as we move forward with a potential new round of stimulus checks, I am hopeful we can learn from the mistakes of the first two rounds, and ensure that IRS is able to send these payments out both quickly and more accurately. To that end, I understand there have been a number of productive conversations to review the lessons learned from the first two rounds of stimulus checks to improve the process.

Question: What are the key improvements that will ensure the third round goes more smoothly? More specifically, will the IRS spread out the issuance of payments over multiple weeks? If so, how will you determine who goes when, and how will that get communicated to taxpayers? If all EIP payments are intended to be paid at once, how will the IRS manage issuing tax refunds concurrently? Will you need to extend the tax season?

Response: The IRS continues to build on programming improvements and changes that we have made since the first round of Economic Impact Payments (EIPs). Indeed, by leveraging these upgrades, the IRS successfully issued the majority of the EIP2s through a single payment file in late December before the opening of the 2021 tax filing season.

Building on our success, the IRS sent out the first round of EIP3 payments the Friday after the enactment of the American Rescue Plan Act. This round was included those individuals with 2020 or 2019 tax return and where the IRS has direct deposit information. It also included EIP3 payments to non-filers who used the Non-Filers tool in 2020. The IRS issued a second round of EIPs the next week for those recipients with a 2020 or 2019 tax returns but where the IRS did not have direct deposit information (such as those returns where a taxpayer received a paper check for their refunds, where the taxpayer did not owe tax, or where the taxpayer owed tax). It also

included payments to recipients with newly processed 2020 or 2019 returns with direct deposit information.

In this second segment of recipients with tax returns, the IRS and the Bureau of the Fiscal Service worked together to use records of recent payments to or from the Social Security Administration, Railroad Retirement Board and Veterans Affairs to issue 12 million payments as direct deposits instead of as mailed payments. This helped significantly expedite payment delivery for these payees. It also helped ensure that payees who receive federal benefits payments on Direct Express cards would be more likely to receive their EIPs on their cards, instead of by check or a newly-issued EIP Card.

In addition, the IRS initiated and led a cross-agency coordination effort to accelerate EIP3 disbursement to certain federal benefit recipients who are not tax filers. We are coordinating with the Social Security Administration, Railroad Retirement Board, and Department of Veterans Affairs to issue automatic payments to their recipients who have not already received an EIP3 based on a tax return (or use of the Non-Filers Tool in 2020).

Starting on Friday, April 2, the IRS will make a large set of payments to Social Security recipients who did not file a 2020 or 2019 tax return and did not use the Non-Filers tool last year. These payments will go to Social Security retirement, survivor or disability (SSDI), Supplemental Security Income (SSI), and Railroad Retirement Board beneficiaries. The majority of these payments will be sent electronically and received on April 7. The IRS estimates that EIP3 payments for Veterans Administration beneficiaries who do not regularly file tax returns could be disbursed by mid-April.

Also, starting on Friday, April 2, the IRS will also make the first round of ongoing supplemental payments for people who earlier in March received payments based on their 2019 tax returns but are eligible for a new or larger payment based on their recently processed 2020 tax returns. These "plus-up" payments could include a situation where a person's income dropped in 2020 compared to 2019, or a person had a new child or dependent on their 2020 tax return, and other situations.

To ensure that the public remains informed throughout the disbursement of EIP3, the IRS continues to issue weekly news releases to share current volumes of EIP3 disbursements and the populations included in each week's distribution. To better manage tax refund and EIP3 issuance, the IRS has worked diligently with the Bureau of the Fiscal Service to eliminate any potential disruption to the tax refund process. Though the IRS does not believe an extension of the filing season was necessary to facilitate EIP issuance because of our around-the-clock efforts to rapidly issue EIP3s, the IRS did extend the filing season to continue to do everything possible to help taxpayers navigate the unusual and difficult circumstances created by the pandemic.

Financial Services and General Government Subcommittee
Internal Revenue Service Oversight Hearing

Witness:
The Honorable Charles P. Rettig, Commissioner of the Internal Revenue Service

Questions for the Record Submitted by Chairman Quigley

Enforcement and Reduced Audits

Since fiscal year 2010, the IRS Enforcement staffing levels have decreased by 33 percent. The fiscal year 2021 bill includes $5.2 billion for Enforcement which is a $202 million increase over fiscal year 2020.

Questions:

Commissioner, please explain how these funds will be used to increase Enforcement staffing?

What is the IRS's strategy to increase Enforcement hires, criminal investigators, and collection agents?

Response: The IRS appreciates all funding support to restore its enforcement capabilities, enabling it to collect revenue for the US Treasury. By covering over $200 million in inflationary and other cost increases, the Fiscal Year (FY) 2021 Enforcement funding level allows the IRS to fully fund its existing Enforcement staff, unlike in prior years when the IRS had to absorb these costs (severely limiting our ability to backfill attrition). With consecutive years of funding support in FY 2020 and FY 2021, the IRS is projected to increase enforcement staffing by about 2700 by the end of this fiscal year. Since the beginning of this fiscal year, the IRS has seen net growth in its revenue agent and tax examiner staff of more than 400. The IRS has increased special agent staff in the Criminal Investigation division (IRS-CI) by about 20 and plans to bring on 5 additional classes (120 special agents) during the fourth quarter.

Fulfilling the IRS mission requires sustained and balanced funding across all our accounts. However, the FY 2021 appropriations provide $177 million less than our request for Operations Support. In order to fund necessary support costs (human capital, IT hardware and software, etc.) for increased Enforcement staffing, commensurate resources are needed in our Operations Support account. Our operating plan includes a $176 million inter-appropriations transfer from Enforcement (requested in our operating plan) to Operations Support and $32 million to Taxpayer Service.

CBO Report regarding Enforcement. The Congressional Budget Office (CBO) recently stated that IRS appropriations have fallen by 20 percent in inflation-adjusted dollars since 2010,

resulting in the elimination of 22 percent of its staff. The drop in funding thus resulted in a decline in the number of IRS employees over that period, particularly in enforcement. Because labor costs account for about 70 percent of the IRS's budget, we instituted measures to reduce the workforce, including a hiring freeze. The amount of funding and staff the IRS has allocated to enforcement activities has declined by about 30 percent since 2010. In this regard, the CBO determined that experienced Revenue Agents, who handle complex enforcement cases, fell by 35 percent and Revenue Officers, who manage difficult collections cases, dropped by 48 percent. The disruptions stemming from the 2020 coronavirus pandemic have made it more difficult for the IRS to enforce tax laws.

As you know, the loss of approximately 15,000 enforcement employees between 2010 and 2018 led to a significant reduction in the number of examinations and the number of follow-ups on discrepancies between returns and third-party data, as well as an increase in assessments that were not collected and unfiled returns that were not secured. According to the CBO, the number of examinations dropped by about 40 percent even as the number of returns filed grew by 5 percent.

Investing in IRS Enforcement. Investments in IRS enforcement efforts are important. The IRS must continue to build and restore base enforcement functions that have declined substantially over the last decade, tackle key compliance priorities and emerging issues, and invest in programs that are essential to maintaining the broad compliance framework even though they may not directly generate revenue.

Enforcement supports the efforts of compliant taxpayers. To ensure our enforcement work fairly addresses noncompliance, we are exercising our best efforts with limited experienced personnel covering high-income taxpayer compliance from several angles. Since 2018, we have allocated significant examination resources and technology to increase our focus on high-income taxpayers. With technological advances, we are now able to identify instances of evasion that would have been undetectable just a few years ago. Our examination personnel are conducting audits of high-income taxpayers identified with a risk of non-compliance at an examination rate higher than any other category of individual filers. We have also initiated a Compliance Initiative Project to ensure that we maintain a high audit coverage of taxpayers at the highest income category. Examiners across each of our operating divisions are assigned work to cover this important category of taxpayers.

A recent paper "Tax Evasion at the Top of the Income Distribution: Theory and Evidence," examines tax evasion at the highest income levels. If a wealthy individual owns a network of private business interests, the examiner faces a considerable challenge in trying to assess the compliance of every single entity in the network. Standard audit procedures can be limited in their ability to detect some forms of under-reported income by high-income individuals. The research paper, looked at identifying data beyond conventional audits that can be useful for risk assessment, audit selection, and the allocation of resources to alternative types of enforcement. Further, this data will help focus resources to provide rapid feedback of emerging risks in Artificial Intelligence risk modeling and to increase the currency of compliance estimates.

The research paper also strongly supports our efforts to recruit and retain experienced, sophisticated, and specialized examiners to conduct the examinations of the high-income and high-wealth individuals and their related entities. During the past year, we successfully brought onboard many experienced external tax professionals to increase our examination focus on pass-through entities associated with high-income and high-wealth individuals. This is extremely important in helping us conduct meaningful examinations of high-income and high-wealth individuals.

We will continue to expand our focused examinations with respect to high-income and high-wealth taxpayers and, to do so, we need experienced, specialized examiners together. As reported in the IRS's most recently published Data Book (2019), the exam coverage rate (closed and in-process) for Tax Year 2015 of taxpayers with incomes of $10 million or more is about 8.16% (down from almost 23% in 2010). The rate for taxpayers with incomes between $5-$10 million was 4.39%; for those with income between $1-$5 million was about 2.39%; for those with income between $500,000- $1 million was about 1.13%; and for those with income between $200,000-$500,000 was about 0.55%. The IRS receives more third-party information (Forms W-2s, Forms 1099, etc.) for taxpayers with income between $200,000-$1 million than for those above $1 million. These audit rates are higher than for any other category of individual filers, and we expect that trend to generally continue. Tax Year 2015 is the last year for which we know the actual audit rates, because the IRS can still open audits for more recent years, so the date for more recent years is not yet complete.

A few impactful current enforcement programs include:

- **Global High Wealth.** The Global High Wealth (GHW) program was created to take a holistic approach in addressing the high-wealth taxpayer population—to look at the complete financial picture of high-wealth individuals and the enterprises they control. Its scope includes individual taxpayers (Form 1040) who have income or wealth in the tens of millions of dollars. A GHW enterprise case consists of a key case, generally an individual income tax return, and related income tax returns where the individual has a controlling interest and significant compliance risk is deemed to exist. Controlling interest can include significant ownership of, or significant influence over, an entity or multiple entities within the enterprise. The enterprise case may include interests in partnerships, trusts, subchapter S corporations, C corporations, other foreign entities, a relationship with private foundations, large gifts, etc. The cases also typically require involvement of cross-border and financial products experts, engineers, and appraisers to conduct the examination.

- **Office of Fraud Enforcement.** Resource challenges, retirements, implementation of major new federal tax programs and law changes, and the pandemic have placed additional restraints on our audit resources. However, most of our experienced field examiners, those who are the most highly trained and experienced with substantial accounting skills, are focused on high-income taxpayers as well as the most egregious examinations. Within the past two years, we launched our Office of Fraud Enforcement (OFE) where technical advisors provide fraud policy and operations support to all IRS operations. OFE has expanded fraud awareness Service-wide by holding "Fraud

Bootcamps" (advanced technical training) to more than 12,000 front line examiners, Managers, and Chief Counsel personnel during the first quarter of 2021. Every compliance examiner has a commitment to general fraud awareness and each Operating Division provides non-taxpayer specific reports at least quarterly to the Commissioner regarding their activities in this area. Most every matter involving the OFE relates to a high-income taxpayer.

- **Office of Promoter Investigations.** Within the past year, we have created an Office of Promoter Investigations (OPI) focused on taxpayers engaging in, and the promoters of abusive tax avoidance transactions, including abusive Syndicated Conservation Easements, abusive Micro-Captive insurance arrangements, as well as taxpayers engaging in other abusive transaction, including those involving virtual currencies. Substantially all of these transactions are engaged in by high-income individuals. OPI coordinates Service-wide enforcement activities most often interacting with our Large Business & International division, our Small Business-Self Employed division, OFE, the Office of Chief Counsel and IRS-CI. OFE has a current project Operation Hidden Treasure focused on the development of various signatures associated with the hidden ownership of virtual currencies to better enable the IRS to pursue undisclosed taxable transactions.

Collection Division. Revenue Officers are the IRS Collection personnel who work the more complex and higher dollar case inventory. While their field activities have been curtailed during the pandemic, they normally contact taxpayers in person at their home or business.

High-income taxpayers are a priority focus of our Collection Division work. High-income taxpayers with balances due receive high prioritization for enforcement action. For high-income taxpayers who fail to file a return, we have programs that address their compliance through notices as well as field presence. All High-Income Non-Filers (HINFs) for tax years 2016, 2017 and 2018 received a notice, and we intend to continue selecting all HINF cases for tax years 2019 and beyond. Operation Surround Sound represents a coordinated effort among our Collection Division, OFE and sometimes IRS-CI to identify and pursue the most egregious high-income non-filers from the HINF sweeps.

Due to attrition, there are some locations where there is an imbalance between the high priority case inventory and the revenue officer staffing needed to work it. In FY 2020, the IRS began a "revenue officer compliance sweep" (ROCS) initiative to address this problem. ROCS typically focus on a geographic area. A team of revenue officers spends several days in an area contacting high priority individual and business balance due or delinquent return taxpayers. Cases selected for the ROCS initiative typically involve high-income individual taxpayer cases and business cases where payroll taxes are going unpaid. To increase the impact, we promoted our strategy through the national media to address HINF delinquencies and improve future voluntary compliance.

Since the end of March 2020, the ROCS we have conducted have been virtual, with Revenue Officers contacting taxpayers by telephone. This spring we plan to conduct 37 ROCS, using telephonic appointment letters to initiate contact with taxpayers in 33 different states. We estimate between 2,200 and 2,700 High Priority cases will be worked as part of this effort, many of which include high-income individual taxpayers as part of the overall high priority taxpayer population. Twelve ROCS will specifically focus on attempting to contact and resolve approximately 600 HINF cases in 20 different states.

Criminal Investigation Division. Most investigations conducted by our IRS-CI involve high-income individuals and their advisors. Our Nationally Coordinated Investigations Unit (NCIU) supplements case development by identifying, promoting, and supporting innovative investigations, delivering high-impact investigations, and addressing emerging issues to advance the mission of the IRS and IRS-CI. During the past year, IRS-CI has conducted approximately 450 undercover investigations, many focused on high-income individuals and their advisors. If completion of a criminal investigation leads to an indictment by the Department of Justice, the publicity surrounding the indictment often has a deterrent effect helpful to tax administration.

Do you have any estimates on how your strategy translates to increased revenue collections and voluntary compliance for those who are not paying their full tax share?

Response: The Program Integrity Cap Adjustment approach illustrates one way the IRS can increase its enforcement activities while funding the support costs that make enforcement activities possible. The proposals have included additional discretionary resources to fund new and continuing investments in expanding and improving the effectiveness and efficiency of its overall tax enforcement program that generates additional revenue. For example, the 2021 proposal included $15 billion in new investments, generating $79 billion in new revenue and a net revenue of $64 billion. These investments generally have an overall **$5 to $1 return on investment (ROI)**. This ROI is likely understated because it does not reflect the effect that enhanced enforcement has on deterring non-compliance.

IRS Program Integrity Cap Adjustments for Deficit Reduction/FY 2021 Budget

Base	$9,059	$9,154	$9,250	$9,348	$9,446	$9,545	$9,646	$9,747	$9,850	$9,953	$94,999
Cap	$400	$828	$1,173	$1,524	$1,879	$1,994	$1,995	$2,005	$2,015	$2,025	$15,838
Total	$9,459	$9,982	$10,424	$10,872	$11,325	$11,539	$11,641	$11,752	$11,865	$11,979	$110,837
Revenues	$264	$542	$3,106	$5,158	$7,356	$9,682	$12,005	$12,974	$13,813	$14,495	$79,395
Net Savings	($136)	($286)	$1,933	$3,634	$5,477	$7,688	$10,011	$10,970	$11,798	$12,469	$63,557

Program Integrity Cap Methodology: Enforcement efforts generate and protect revenue, as well as encourage voluntary compliance for taxpayers who would otherwise seek to avoid meeting their tax obligations under the law. The IRS calculates an ROI for both revenue generating and revenue protecting investments. Generated revenue is from compliance efforts that yield direct, measurable results through

enforcement activities such as examination and collection returns Protected revenue is revenue the IRS protects from being refunded erroneously It is associated with activities that occur before issuing a taxpayer's refund, including the identification of fraud and questionable returns

Financial Services and General Government Subcommittee
Internal Revenue Service Oversight Hearing

Witness:
The Honorable Charles P. Rettig, Commissioner of the Internal Revenue Service

Questions for the Record Submitted by Congressman Womack

Bank Account Verification Process

In the wake of the COVID-19 pandemic The IRS and the Bureau of Fiscal Service had oversight over the Economic Impact Payment (EIP) program and the administration of more than 300 million payments totaling in excess of $412 billion. For the first round of EIPs, it is estimated that approximately 6.9 million, or 11%, of the bank accounts into which tax refunds were electronically deposited for the 2018 tax year were closed by the time of the first round of EIPs in March 2020 and, as a result, efforts to deposit much needed CARES Act relief payments into these accounts stalled. Further, we understand that ownership of many of these taxpayer bank accounts changed resulting in EIPs being deposited into the wrong bank accounts. It is the understanding of the Committee that the IRS has access to banking industry services that can be used to validate the ownership and status of taxpayer bank accounts to ensure EIPs are deposited into the right accounts but have not been utilized.

Question: Anticipating another round of EIPs via pandemic relief legislation and considering the delay in distribution and higher cost associated with using paper checks and prepaid cards for EIP distribution, what are current efforts to leverage the account verification services available through the banking industry to help expedite relief to taxpayers by ensuring that it is delivered electronically into correct bank accounts?

Response: To increase the success of this third round of Economic Impact Payments (EIP3), the IRS and Bureau of the Fiscal Service (BFS) continue to work collaboratively to reduce the volume of paper checks and the number of direct deposits rejected by designated financial institutions. A direct deposit may be rejected for a variety of reasons, including because the eligible recipient's account is closed or otherwise is invalid. Despite this, EIPs sent electronically are far more likely to be successfully delivered than both paper checks and debit cards sent by mail. As of March 30, 2021, the rate of return for direct deposits issued during EIP3 is 2.0%, which is lower than for the first two rounds of EIPs.

By leveraging our experience gained during the first two rounds of Economic Impact Payments (EIP1 and EIP2), the IRS and BFS evaluated all eligible individuals who previously received a paper check or a debit card. Specifically, BFS performed an analysis of these paper check and debit card populations to locate available direct deposit information from recent payments made to or from the Social Security Administration, Railroad Retirement Board, and Department of

Veterans Affairs that could be used to increase disbursements of EIP3 through a direct deposit. As part of this process, BFS leveraged an account verification service as appropriate to confirm account validation and ownership. As a result, the IRS was able to issue direct deposits to more than 12 million recipients who would have otherwise received a mailed payment. This significantly expedited payment delivery for these recipients including many who receive benefits from the Social Security Administration and Department of Veterans Affairs. It also helped ensure that those who receive federal benefits payments on a Direct Express card would be more likely to receive their EIPs on their cards, instead of by check or a newly-issued EIP Card. Less than one-half of one percent of these payments have been returned as undeliverable by financial institutions as of March 30, 2021. In addition, the IRS is issuing millions of additional electronic payments to Social Security, RRB, and VA recipients who do not normally file a tax return and for whom direct deposit information would otherwise be unavailable. In particular, the majority of Social Security beneficiaries who do not normally file tax returns should receive their EIPs on April 7 through direct deposit or to existing Direct Express cards. The IRS estimates that EIP3 payments for VA beneficiaries who do not regularly file tax returns could be disbursed by mid-April.

In preparation for EIP3, the IRS worked with the financial and tax industries to validate banking information provided on tax returns. The IRS undertook these efforts to prevent unsuccessful disbursements of EIP3 to temporary accounts used for tax refund purposes. By validating this banking information, the IRS has dramatically reduced EIP3 disbursement to temporary accounts. Prior to the enactment of the American Rescue Plan Act of 2021, we had intended to leverage the account verification service available through BFS to test this data in advance of EIP3 disbursements. However, to comply with that legislation's directive to disburse these payments "as rapidly as possible,"[1] we used our validation efforts instead and begin disbursing EIP3 within days of the legislation's enactment. We continue to work with BFS on options to validate account information, while following all disclosure provisions and legislative authority for EIPs, tax refunds, and other non-tax payments from the IRS.

[1] 26 U S.C § 6428B(g)(3) ("The Secretary shall ... refund or credit any overpayment attributable to this subsection as rapidly as possible, consistent with a rapid effort to make payments attributable to such overpayments electronically if appropriate.").

Financial Services and General Government Subcommittee
The Judiciary's Budget Request for Fiscal Year 2022

Witnesses:
The Honorable John W. Lungstrum, Chair Judicial Conference Committee on the Budget

The Honorable Roslynn R. Mauskopf, Director of the Administrative Office of the U.S. Courts

Questions for the Record Submitted by Chairman Quigley

Defender Services Budget

The Defender Services fiscal year 2022 budget requests a total of $1.4 billion which is an increase of $93 million above fiscal year 2021.

1. **How will the increase in fiscal year 2022 funds cover the impact of the recent Supreme Court McGirt decision in which the U.S. Attorneys in Oklahoma estimate caseload to increase 300-500 percent for Creek nation prosecutions?**

   The Defender Services FY 2022 request includes 32 new positions (16 FTE/$3.4 million) for *McGirt*-related workload If Congress approves and funds these new positions , as well as the annualization of the 26 *McGirt*-related positions included in the FY 2021 Defender Services financial plan, a total of 58 federal defender organization (FDO) positions would be dedicated to *McGirt* in FY 2022. This staffing request was calibrated to reflect constraints on the pace at which the two Oklahoma FDOs will be able to recruit, hire, train and house additional personnel.

   In addition to these dedicated, permanent positions, the judiciary has pursued supplementary protocols to provide the Defender Services program with flexibility to allocate resources quickly to FDOs to respond to new laws, prosecutorial initiatives, or Supreme Court rulings, such as *McGirt*. One such protocol is reflected in the FY 2021 financial plan and authorizes funding for up to 12 additional temporary FTE for FDOs to address surging or unanticipated FDO caseload. Funding needed to support these temporary FTE is provided by redirecting funds from other activities within the Defender Services account. This protocol is expected to remain available in the eventual FY 2022 financial plan and could provide some additional short-term resources for *McGirt* needs. A second protocol is included in the FY 2022 Defender Services budget request, and it establishes an official FDO FTE staffing reserve (28.5 FTE/$6.0 million) to provide additional flexibility to quickly allocate resources in response to significant caseload

pressures without requiring offsetting cuts elsewhere in the account. Much of this requested staffing reserve is currently projected to be needed to support a substantial increase in capital workload in the District of Arizona pursuant to a federal process known as "Opt-in," but some of the reserve may be re-directed to address *McGirt* requirements in an emergency.

The judiciary will continue to monitor *McGirt*-related workload and will keep the Subcommittee apprised of any significant changes.

2. If the decision in McGirt applies to all Five Civilized Tribes, how will Defender Services handle the estimated 1,300-1,500 percent increase in caseload?

The projected increases of 1,300-1,500 percent could eventually require over 200 additional FDO positions (attorneys and support staff) based on current staffing formulas. For comparison, the United States Attorneys' Offices for the impacted jurisdictions estimate that to maintain current average numbers of filings per Assistant United States Attorney (AUSA) for criminal cases, the districts will need an additional 111 AUSAs for the Northern District, 237 AUSAs for the Eastern District, and 8 AUSAs for the Western District. This is a total increase of 356 additional prosecutors, not including support staff. Defender Services resources could need to grow proportionately to continue to provide the same high-quality representation under the Criminal Justice Act.

Prior to the *McGirt* decision, the Federal Defender for the Northern and Eastern Districts of Oklahoma operated with only 21 personnel (9 attorneys across the two offices). Currently, the FDO is recruiting new attorneys and support staff (utilizing the 26 positions in the FY 2021 spending plan as described above) and an additional 32 new positions are included in the FY 2022 request, but those efforts will still leave the FDO understaffed relative to the U. S. Attorneys. As noted above, FDO staffing requests have been adjusted to reflect realistic assumptions about the pace at which new staff can be recruited, hired, trained and housed.

Due to constraints on the relevant FDOs, appointed panel attorneys are playing a significant role in representation during this difficult time and will continue to do so. Panel attorneys are currently taking on more than 50 percent of the cases in the Northern and Eastern Districts of Oklahoma. However, there are only 40 panel attorneys between the two districts, and they have reached capacity. Efforts are underway to appoint more out-of-state panel attorneys to handle a portion of the overage. In addition to seeking panel attorneys from outside of Oklahoma, assistance is also being provided by FDOs across the country through the Defender Services Out-of-District Appointment Protocol. So far, six other FDOs are representing nearly 30 Oklahoma clients, with additional FDOs set to take on more cases. Nevertheless, those resources are limited, and long-distance representation is not a feasible long-term solution, so increasing the capacity of the Oklahoma FDOs will remain a critical priority.

3. How will the McGirt decision impact the Defender Services and panel attorney caseload in the next three years?

Based on available projections, caseload numbers in Oklahoma will rise rapidly in the next three years, significantly straining resources for both the FDOs and panel attorneys. The judiciary will need to request additional new FDO positions for *McGirt* (in addition to the 58 included in the FY 2022 request) in FY 2023 and beyond to address this projected workload. The Federal Public Defender for the Eastern and Northern Districts of Oklahoma, currently one of the program's smaller organizations, will eventually become one of the largest because four of the five reservations are within those federal judicial districts. However, all three Oklahoma districts are affected by *McGirt*, and they will all need to recruit and train additional FDO staff and panel attorneys.

The *McGirt* decision creates increased caseload for the Defender Services program in three distinct ways: (1) federal prosecutions of current and prior Oklahoma state cases no longer valid post-*McGirt*; (2) new federal prosecutions brought by the United States Attorney's Offices for offenses committed since the *McGirt* decision; and (3) post-conviction challenges to prior Oklahoma state convictions (through federal habeas petitions challenging state convictions filed under 28 U.S.C. § 2254, or petitions challenging federal convictions predicated on voidable state convictions filed under 28 U.S.C. § 2255). The first group represents cases that require immediate indictment or possible release of defendants as state courts are dismissing pending cases. The second group of cases will be ongoing indefinitely in the absence of a legislative change altering the balance of jurisdiction among federal, state, and tribal courts. The third will represent waves of work that could extend for many years. Because most of these cases arise under the Major Crimes Act, they are, by definition, serious cases, including violent crimes such as murder, rape, sexual assault, and robbery.

Now that *McGirt* has been extended beyond the Creek Nation, hundreds of cases may become thousands within the next three years. While some work is likely to subside as historical convictions are reviewed and cleared, the new baseline caseload beyond these first three years will be many times greater than experienced prior to the *McGirt* decision.

Ultimately, Department of Justice (DOJ) policies will determine the number of new cases filed. However, DOJ has already deployed significant new resources to Oklahoma, and they continue to estimate caseload increases of over 1,000%. This tenfold or more increase in cases over historical norms in these jurisdictions will likely take place quickly. The chart below shows estimated FDO staffing needs associated with several possible increases in *McGirt*-related workload (based on different assumptions about DOJ case filing practices). Cases that cannot be handled by an FDO will be referred to panel attorneys.

Formula FTE Increases If McGirr Results In 500%-1500% Jump in Federal Defender Organization (FDO) Weighted Cases Opened (WCO)										
Projected FTE assuming WCO increases	Current		100% Increase		500% Increase		1,000% Increase		1,500% Increase	
	Oklahoma Northern/Eastern	Oklahoma Western	Oklahoma Western		Oklahoma Northern/Eastern	Oklahoma Western	Oklahoma Northern/Eastern	Oklahoma Western	Oklahoma Northern/Eastern	Oklahoma Western
SY2020 WCO	841.85	811.19	1,622.38		4,209.25	4,055.95	8,418.50	8,111.90	12,627.75	12,167.85
SY2016-20 Avg. WCO	741.87	742.14	1,484.28		3,709.36	3,710.70	7,418.72	7,421.40	11,128.08	11,132.10
Assumed WCO/FTE for 10th Circuit	41.70	41.70	41.70		41.70	41.70	41.70	41.70	41.70	41.70
Resulting FTE	17.79	17.80	35.59		88.95	88.99	177.91	177.97	266.86	266.96
Including Constants	3.64	3	3		3.64	3	3.64	3	3.64	3
Total FTE Incl. Const.	21.43	20.80	38.59		92.59	91.99	181.55	180.97	270.50	269.96

4. **As a result of the pandemic, have there been any changes in the workload distribution between the Federal Defenders and the Panel Attorneys?**

It does not appear that the pandemic has changed the workload distribution between federal defenders and panel attorneys. As shown in the table below, there have been modest fluctuations in the distribution of caseload over the past five years. The share of unweighted cases opened that the FDOs have undertaken relative to appointments of panel attorneys ranges from 59% to 65%.

Statistical Year	(FDO) Unweighted Cases Opened	(Panel) Appointments	% FDO	% Panel
2017	136,074	78,294	63%	37%
2018	117,581	80,870	59%	41%
2019	176,166	96,710	65%	35%
2020	146,111	93,726	61%	39%
2021	76,138	54,000	59%	41%

The figures above relate to unweighted cases opened and panel appointments observed over the FDO statistical year (SY), which runs from April 1 to March 31 (partial year results are annualized). The changes in distribution, especially in SY 2019, were mostly the result of changes in immigration related case openings by FDOs, which are heavily concentrated in a few organizations along the Southwest Border.

5. **What adjustments have been made so Federal Defenders and panel attorneys can meet with clients during the pandemic to work their cases?**

During the pandemic, federal defenders and panel attorneys (collectively called "CJA practitioners") have relied on technology to maintain access to their clients and to ensure their clients have access to the courts when necessary. However, they have faced challenges communicating with clients, sharing legal documents, and performing tasks necessary to prepare a constitutionally effective defense. These challenges impact all CJA practitioners, but especially those working on capital cases, who are statutorily guaranteed "free access" to their clients at "all reasonable hours." Federal defense attorneys have shown an admirable commitment to maintaining dedicated representation

of their clients despite these challenges and the ever-present risk of contracting COVID while performing work duties.

In order to maintain access to their clients, CJA practitioners have needed to negotiate special arrangements with prisons, jails and other detention facilities, often on an institution-by-institution basis. Due to variations in regional health conditions, institution policies, and the availability of videoconferencing equipment, software and staffing support in state or local facilities, there have been significant differences in the level of access made available in different parts of the country. Some institutions have allowed in-person client meetings through glass. If CJA practitioners have been able to meet their clients in person, such meetings entail risk for non-vaccinated attorneys, staff and clients and are sometimes hindered by a lack of privacy or other deficiencies in the space that detention facilities have been able to make available for such meetings. Other practitioners have only been able to communicate with clients via videoconference, telephonically or by postal mail.

To facilitate client access, the Defender Services Office of the Administrative Office of the U.S. Courts (AO) has provided funds for the acquisition and installation of necessary equipment for videoconferencing whenever possible, and the Defender Services' National Litigation Support Team has also provided technical assistance to CJA panel attorneys with videoconferencing platforms used to communicate with clients and participate in court proceedings.

6. How is the pandemic impacting the quality of criminal justice representation?

The most significant obstacle CJA practitioners have encountered during the pandemic is the inability to have frequent, in-person contact with clients. It is only through in-person contact that CJA practitioners can build a relationship of respect and trust, which is a necessary foundation to providing advice about the critical decisions the program's clients face (particularly for those facing federal capital cases or challenging their capital convictions and death sentences). Among other things, limitations on in-person contact constrain the ability of defense attorneys to effectively negotiate plea resolutions, which are critical to resolving cases that would otherwise consume inordinate time, money and other resources, and to conduct fulsome investigations, including the interviews and records collection necessary to assemble and present mitigation evidence. As recovery from the pandemic proceeds, CJA practitioners must resume building these relationships, which can only begin at scale once detention facilities are safely reopened for attorney-client meetings or more clients are released on pretrial supervision.

Despite these challenges and limitations, CJA practitioners have continued to zealously advocate for their clients, even when doing so has required those attorneys to assume the risk of COVID infection. As vaccination efforts continue to expand and more attorneys and clients receive protection from COVID, the judiciary hopes to safely return federal defenders to more normal operating procedures that will allow them to better serve their clients and fulfill their constitutional roles in the operation of the courts. We will also closely monitor the impact of a potential wave of representational requirements that may

stem from the gradual resumption of jury trials and the processing of a backlog of cases and investigations that was created by public health limits on judicial activity over the past year. We will keep the Subcommittee apprised of any significant changes in the expected workload for the Defender Services program as needed.

Probation and Pretrial Services

1. **U.S. Probation and Pretrial Services Officers are among the only federal law enforcement officers who do not receive Law Enforcement Availability Pay (LEAP). Although a relatively small number of officers in certain Districts may earn up to 5 hours of compensatory time per week for overtime hours worked, many officers do not receive any form of overtime compensation. That is why the Committee directed the Administrative Office to report by June, 2021 on implementing LEAP pay for these law enforcement employees. Please provide the Subcommittee with an update on the status of this report.**

   The requested report is currently under development within the AO. The AO does not foresee any obstacles to the timely submission of the report by the June 25, 2021, deadline.

2. **After nearly a full year of operating during the COVID-19 public health emergency, what changes to operational practices have been put in place to reduce the risk of exposure and protect the health and safety of individuals on supervised release and Probation and Pretrial Services Officers?**

   COVID-19 forced probation and pretrial service offices to adjust operations. Immediately, districts adjusted field work and requirements that ordinarily would require face-to-face meetings with the people who officers investigate and supervise. For example, districts transitioned many in-person home visits to remote visits via FaceTime or similar virtual tools and reconfigured space within probation and pretrial services offices to allow for appropriate social distancing during required office visits. Those decisions are based on factors including the extent of the outbreak in the district, the operating status of the local courthouse, advice from local government and health officials, and the ability of the office to use alternate methods to conduct the work, including using various video conferencing technologies.

   At the national level, the AO provided extensive advice to probation and pretrial services offices and to district and magistrate judges about changes to operations designed to protect staff and those they come in contact with from exposure to the coronavirus. The advice, which was implemented by districts as appropriate, includes the following:

   - Identifying alternate methods of drug testing, such as using the Sweatpatch (a transdermal drug testing device) and oral fluid samples, which can be self-administered by the people under supervision using remote observation (e.g., FaceTime) and mailed back for analysis.

Financial Services and General Government Subcommittee

The Judiciary's Budget Request for Fiscal Year 2022

Witnesses:

The Honorable John W. Lungstrum, Chair Judicial Conference Committee on the Budget

The Honorable Roslynn R. Mauskopf, Director of the Administrative Office of the U.S. Courts

Questions for the Record Submitted by Congresswoman Torres

1. **At last year's hearing on the Judiciary's FY2021 Budget Request, I asked a number of questions about how the judiciary was addressing the conditions in the District of Kansas that allowed Judge Carlos Murguia years-long sexual harassment of multiple court employees to go apparently unnoticed. In the Judicial Conference's written responses to questions for the record submitted after last year's hearing, the conference noted that although Judge Murguia had retired, a "systemic review of the Murguia matter by the Tenth Circuit Judicial Council ... is already occurring." What is the status of that review and what, if any, remedial actions have been taken in the Tenth Circuit and the District of Kansas specifically as a result of that review?**

   The Tenth Circuit has completed a systemic review of the Murguia matter. It reached several conclusions regarding the conditions that may have enabled Judge Murguia's misconduct or prevented its discovery. Further, the Tenth Circuit continues to take steps to prevent any recurrence of similar misconduct, along with the federal judiciary's many workplace conduct initiatives over the past few years. (*See* Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 20 Commentary (describing available actions on potential institutional issues when action on a misconduct complaint is no longer necessary).)

   First, the Tenth Circuit determined that when Judge Murguia resigned, its investigation into his misconduct had been thorough and complete. Judge Murguia's resignation did not cut short the Tenth Circuit's investigation or limit full consideration of his misconduct. In fact, the Tenth Circuit's investigation included interviews of fourteen former and current staff members and extensive review of documentary evidence, as well as a day-long hearing at which Judge Murguia testified under oath. Upon conclusion of

the investigation and a lengthy report, the Judicial Council issued its order taking remedial action against Judge Murguia. It was not until that Judicial Council order was before the Judicial Conference Committee on Judicial Conduct and Disability on review that Judge Murguia resigned. The Tenth Circuit's investigation was complete at that time.

The judges who learned of Judge Murguia's misconduct acted appropriately by informing the chief district judge of the allegations. As soon as the Chief Judge of the District of Kansas became aware of the report of sexual harassment, he notified the Chief Judge of the Tenth Circuit, Chief Judge Tymkovich, who immediately began an investigation and ultimately took action to identify a misconduct complaint. The Tenth Circuit also concluded, following its investigation, that Judge Murguia's misconduct ceased as soon as he was confronted with the misconduct allegations and that the Tenth Circuit's extensive examination had uncovered all incidents of misconduct by Judge Murguia.

The Murguia misconduct investigation was principally conducted by a former agent of the Federal Bureau of Investigation (FBI) retained by the Tenth Circuit, and all relevant persons were interviewed, including fourteen current and former staff members of Judge Murguia. The judicial misconduct process not only included a thorough investigation, resulting in findings of judicial misconduct and a public reprimand, but also layers of institutional review by a Special Committee, comprised of five judges, the Tenth Circuit Judicial Council, comprised of thirteen judges, and the Judicial Conference Committee on Judicial Conduct and Disability, comprised of seven judges.

Second, the Tenth Circuit imposed a severe sanction, namely, a public reprimand and several other administrative safeguards and medical treatment requirements. The Tenth Circuit had declined to impose only a private reprimand because of the seriousness of the misconduct, and the belief that a public reprimand would deter recurrence of such misconduct not only by Judge Murguia but also by any federal judge. The order of public reprimand, issued on September 30, 2019, is provided as Attachment 1. That order was under review by the Judicial Conference Committee on Judicial Conduct and Disability when Judge Murguia resigned. Prior to the effective date of Judge Murguia's resignation, the Committee issued a lengthy public Memorandum of Decision describing the misconduct proceedings and investigation that led to his public reprimand and resignation. That Memorandum of Decision is provided as Attachment 2. Judge Murguia's resignation removed him of his judicial duties and deprived him of the possibility of a pension or any other benefits.

Third, the Tenth Circuit considered the conditions that enabled Judge Murguia's misconduct and prevented its timely discovery. Circuit Chief Judge Tymkovich identified the judicial misconduct complaint based on a report from one former judicial employee of Judge Murguia. The trained FBI investigator identified other employees with relevant information, gained their trust, and encouraged them to share their experiences, revealing

other instances of misconduct. The Tenth Circuit contacted all witnesses with potentially relevant information and concluded that it had investigated, considered, and addressed all possible misconduct.

Finally, the Tenth Circuit assessed the precautionary or curative steps that could be undertaken to prevent the recurrence of any such similar misconduct. In addition to the public reprimand of Judge Murguia, which led to his ultimate resignation, the judiciary adopted nationwide reforms based on the Federal Judiciary Workplace Conduct Working Group's recommendations. These reforms included the creation of the Office of Judicial Integrity (OJI), where employees can seek help with, and submit anonymous reports about, any harassment or workplace conduct concerns, and comprehensive training to educate employees about their workplace rights and the multiple avenues available to report and seek assistance with any workplace wrongful conduct.

In addition, the Tenth Circuit instituted immediate circuit-wide reforms, namely:

- The Tenth Circuit hired the first Circuit Director of Workplace Relations (DWR) in the nation, in August 2018, the same month that Chief Circuit Judge Tymkovich identified the judicial misconduct complaint into Judge Murguia.

- In the fall of 2018, Chief Judge Julie Robinson of the District of Kansas and the Tenth Circuit DWR conducted a full-day training for all of the judges of the District of Kansas on sexual harassment and other prohibited workplace conduct.

- The 2019 Tenth Circuit Judicial Conference included a plenary half-day session on sexual harassment and workplace conduct issues in the judiciary, attended by the judges of all the courts in the Circuit. This included a detailed discussion of the many reforms adopted on the recommendations of the Federal Judiciary Workplace Conduct Working Group, the revised Code of Conduct for U.S. Judges, and the judiciary's standards of workplace conduct. It also included training on sexual harassment and multiple scenario discussions to educate judges on the risks created by the power differences between judges and law clerks, the need to take appropriate action when learning of potential harassment allegations, and the wide array of behavior that could be unwelcome or offensive, though not falling within the legal definition of sexual harassment under Title VII of the Civil Rights Act of 1964.

- The Tenth Circuit established a Workplace Conduct Committee in 2019 to determine best workplace conduct practices throughout the Circuit. The Committee is currently considering the feasibility of conducting an employee survey to assess their workplace conduct experiences, awareness of the judiciary's workplace conduct standards, and the available reporting avenues and workplace conduct resources.

- All new law clerk orientations include an hour-long discussion of the judiciary's standards of workplace conduct, the ability to confidentially report or seek guidance about any workplace wrongful conduct or judicial misconduct to the OJI or the Tenth Circuit DWR, and the other informal ways to report and get help with any workplace conduct concern.

- All of the courts in the Tenth Circuit have adopted the revamped Employment Dispute Resolution (EDR) Plan, which prohibits all forms of harassment and offers both informal and formal options to resolve workplace wrongful conduct.

- The Tenth Circuit DWR has provided workplace conduct, anti-harassment and bystander intervention training to the employees, managers, and EDR Coordinators in the District of Kansas, Judge Murguia's former district, but also to nearly all of the other courts in the Tenth Circuit; training in the few remaining courts is scheduled in the next few months.

2. **In his written response to Sen. Grassley's 2018 Questions for the Record on judicial misconduct, Director Duff noted that the CAA amendments aimed at improving the congressional response to sexual harassment were in progress and that just as the judiciary trusts "that Congress will complete its work," Congress should "trust the Judiciary" regarding misconduct (graf 4, p. 28). Yet Congress' work, which President Trump signed into law in Dec. 2018, was a robust legislative response to the problem. As such, more than two years later, has the Judicial Conference's or AO's policy changed so that they now support a legislative solution to rooting out harassment in the judiciary?**

No. The judiciary has demonstrated that it has sufficient authority to strengthen workplace protections for employees and has responded quickly and decisively. In December 2017, Chief Justice Roberts asked the Administrative Office of the United States Courts (AO) to establish a working group to thoroughly examine workplace conduct within the judiciary.

Announced on January 12, 2018, the Federal Judiciary Workplace Conduct Working Group (Working Group) moved swiftly by inviting input from key stakeholders and national experts to better focus its efforts on the most prevalent concerns. The Working Group met with a group of law clerks and a cross-section of judiciary employees, and established a comment mailbox on the uscourts.gov public website for current and former law clerks and other employees to provide comments and suggestions. The Working Group also met with the Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace.

using risk management principles to understand, document, and deliver reasonable assurance over financial operations and reporting at the AO, circuits, court units, and federal public defender organizations. The AO's internal control and risk management efforts have also been featured in several meetings between the AO and stakeholder groups of court leaders.

In recognition of the extensive and comprehensive analysis and recommendations of the Working Group, the judiciary has taken significant steps in meeting its goals of (1) revising and clarifying the judiciary's codes and other published guidance for promoting appropriate workplace behavior; (2) improving the procedures for identifying and correcting misconduct, including the creation of new avenues for employees to seek advice and register complaints; and (3) enhancing educational and training programs to raise awareness of conduct issues, prevent harassment, and promote an exemplary workplace environment.

The judiciary clarified its standards of workplace conduct and its policies, revising its Codes of Conduct, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Model Employment Dispute Resolution (EDR) Plan to explicitly define all forms of harassment and discrimination as wrongful conduct. The confidentiality provisions in the law clerk handbook were revised to clarify that nothing in those provisions prevents revealing or reporting workplace misconduct, including harassment. The revised policies and Codes of Conduct encourage bystander intervention and create additional accountability mechanisms for all judiciary employees and judges, requiring that employees should take appropriate action upon learning of misconduct. The Code of Conduct for United States Judges further increased accountability by stating that not taking appropriate action upon learning of potential misconduct may itself constitute misconduct.

The judiciary revamped its EDR process to offer more flexible and accessible options for resolution, extending filing deadlines and removing perceived barriers or other cumbersome preliminary review requirements, such as mandated counseling or mediation prior to utilizing certain resolution options. Employees may have an advisor or representative of their choice throughout any EDR proceeding and may seek interim relief while the process is ongoing. The Model EDR Plan also provides for greater accountability through more direct involvement from chief judges and unit executives in the Assisted Resolution process, and expressly informs appointing officials that they may need to independently assess whether a misconduct action is necessary separate and apart from the EDR process. Importantly, the judiciary recognized that unchecked abusive conduct can lead to harassment, and the updated Model EDR Plan goes a step further than the other branches of government by not only defining abusive conduct as a form of wrongful conduct, but encouraging employees to report those concerns and permitting employees to utilize the same formal complaint process for abusive conduct claims as is used for harassment claims.

The EDR process offers both informal and formal options for resolution of workplace conduct concerns, and now provides more confidential options and reporting resources for employees, both inside and outside of their court and employing office. The judiciary created innovative and effective avenues for employees to seek confidential advice and

report concerns through a national OJI and local Circuit DWRs. The OJI and DWRs also conduct workplace conduct investigations upon request of a court.

Lastly, the judiciary enhanced its education offerings and increased the availability and frequency of training programs. Instructive in-person and virtual programs and trainings on judiciary policies and procedures regarding workplace sexual harassment were added to the curricula of Federal Judicial Center (FJC) programs for judges and court unit executives. The FJC works with the courts to provide a variety of orientation and educational programs to judges, law clerks, and court staff regarding workplace harassment prevention, diversity and civility in the workplace, and the new requirements under the revised Codes of Conduct. New law clerks are provided orientation and supporting materials outlining their options if they experience or observe inappropriate conduct in the workplace. The AO's Office of Fair Employment Practices conducts anti-harassment and workplace conduct training sessions for court executives, senior managers, court employees, and chambers staff. The OJI and DWRs also provide extensive training for all judiciary managers and employees on workplace standards of conduct, the multiple available reporting avenues, and the options for resolution of workplace conduct concerns.

Commitment to and planning for further progress and improvement in this important area continues through the leadership of the OJI, in coordination and partnership with the Circuit DWRs.

3. **How many complaints, inquiries, and request for assistance regarding workplace conduct did each Circuit Director of Workplace Relations receive last year?**

In accordance with Judicial Conference policy and as required by the Model EDR Plan, the AO collects data for each statistical year on: (a) all written requests for Assisted Resolution, in which an employee seeks informal help for a workplace conduct concern, and (b) all EDR Formal Complaints, in which an employee alleges wrongful conduct and seeks a written decision on their allegations by a judge. As of the end of the 2020 statistical year (September 30, 2020) courts and Federal Public Defender Offices reported to the AO a total of 25 Assisted Resolution requests (11 of which were still pending), and 11 EDR Formal Complaints, four of which were still pending.

The AO does not currently collect data on Informal Advice contacts and inquiries, but the Federal Judiciary Workplace Conduct Working Group is currently studying the practicability of collecting such data. Several concerns have been identified. First, the judiciary is committed to eliminating any potential barriers to reporting and the ability to seek confidential advice from a neutral party is essential to that goal. There is concern that if judiciary employees were aware that data was being collected regarding these confidential Informal Advice contacts, it may inadvertently chill the otherwise robust use

of this important EDR option. Second, employees seek confidential advice about a wide range of topics and very few are reports of alleged incidents of wrongful conduct. Lastly, none of these options are exclusive. Employees can, and often do, reach out to multiple points of contact regarding the same concern, and/or multiple involved parties may reach out for individual advice for the same situation. Given the confidentiality protections in place, it is also not possible to eliminate potential double and triple counting of one employee's multiple contacts about a single issue. Thus, data about Informal Advice might not provide meaningful insight. However, data collection is not the only means of understanding current workplace conduct trends; for example, the Circuit DWRs and the OJI meet biweekly to discuss, in qualitative terms, current workplace conduct issues, prevalent concerns and trends, and the overall utilization of the EDR options for resolution.

An employee's decision to utilize the various avenues for resolution provided through the Model EDR Plan is often a very personal choice and, by design, the judiciary's model provides multiple options—both inside and outside of an employee's court—so that employees can choose for themselves the individual with whom they are the most comfortable. Employees may seek confidential and impartial advice and guidance, request an Assisted Resolution, and/or file a Formal Complaint through one of several designated and trained EDR Coordinators in their employing court, who are often peers and trusted colleagues. Employees may also seek support outside their court through their Circuit DWR, if an outside perspective and someone more situationally removed is preferred. A third and even further removed option is available in the national OJI, from which employees can also seek confidential advice and guidance regarding workplace conduct concerns.

Accordingly, it is not the AO's practice to segregate data regarding formal complaints and requests for assistance by their respective points of contact, and per the above, providing data specific to only the DWRs would paint an incomplete and inaccurate picture. The intent of the EDR Plan is to provide a wide range of flexible options within the federated judiciary rather than to funnel concerns through a particular person. This also avoids the possibility of creating significant confidentiality concerns where the national, top-level data provided above does not.

4. **Based on our research, all of the Circuit Courts have a Director of Workplace Relations, except for the Second and Seventh Circuits. Why do these circuits not have Directors of Workplace Relations?**

Eleven circuits have a DWR. The Second Circuit has had a DWR since December 2019. The Seventh Circuit is committed to filling a DWR position in 2021 and has already taken initial steps toward doing so.

5. Do the Judicial Conference and the AO's cost-containment efforts apply to the Judiciary Information Technology Fund (JITF) electronic public access (EPA/PACER) fee expenditures? If so, please describe in detail those efforts and the cost savings realized as a result.

The judiciary has had a robust cost-containment program in place for many years and has worked to evaluate potential cost savings and cost avoidances across all accounts. The judiciary tries to identify efficiencies wherever it can within all its available resources; cost-containment efforts are not limited to specific appropriations or sources of funds.

PACER fees are collected to fund judiciary initiatives related to Electronic Public Access (EPA). As initiatives change or projects are defunded, the remaining funds are committed to other EPA-related activities. The efforts below may lead to improvements in the efficiency and/or cost effectiveness of the use of PACER fee revenue within the EPA program. No formal assessment of specific savings associated with either of these initiatives has been conducted and, in some respects, may be premature. If realized cost savings or avoidance are identified as these initiatives proceed, those figures will be added to the cost-containment discussion in the judiciary's annual congressional budget justification.

- EPA Public User Group: In January 2020, the judiciary selected 12 PACER users from the legal profession, media, government, and academia to serve on the EPA Public User Group, a formally chartered entity that provides advice and feedback on the development, implementation, and enhancement of the judiciary's public access services, including, but not limited to, PACER, the PACER Case Locator, Multi-Court Voice Case Information System applications, and the availability of electronic court records. The group has met four times since its creation and has already provided a range of recommendations that have been implemented, are being pursued, or are being analyzed for their feasibility. The group was not established to find savings within the public access program but actions and changes meant to improve the PACER user experience may also result in such savings, depending on the nature of the changes.

- NextGen CM/ECF: The development, operation and maintenance of the electronic case management and case filing system (CM/ECF) and its successor, NextGen, are the largest component of the annual EPA program budget. Given its size and scope, the successful implementation of NextGen has significant budget and cost implications. In order to maximize its chances for success and ensure the delivery of a modern, efficient and easy-to-use service, the judiciary has entered into an agreement with a technology consultancy within the General Services Administration's Federal

Acquisition Service to assess the NextGen program. The agreement will result in 1) a prioritized roadmap with recommendations for how best to deliver a high-performance case management and electronic case filing system to the courts and 2) assistance in the execution of that roadmap, to include refinement of the roadmap's recommendations, guidance on procurement strategies, and additional user research. As with the Public User Group, this NextGen assessment was not established for the purpose of finding savings within the NextGen program, but improvements and management strategies associated with the assessment may also result in cost savings or avoidance.

6. **Last year, federal judges were directed to lobby against the Open Courts Act, a bill that would have modernized the courts electronic filing system and would have made access to court documents free. According to public sources, judges were provided with talking points from the Administrative Office of the United States Courts containing unsupported assertions and hyperbolic language. What rules of conduct, policies, and procedures govern both the decision to urge federal judges to lobby for or against specific legislation and the content of the lobbying materials provided to those judges?**

We respectfully disagree with several underlying premises of the question, namely, that federal judges engaged in lobbying and that certain talking points contained unsupported assertions and hyperbolic language.

As to the first premise, the judiciary, as a co-equal branch of the federal government, has an obligation to educate Congress about how potential legislation may affect the administration of justice. Federal judges – typically acting in coordination with and on behalf of the Judicial Conference of the United States – frequently reach out to Members of Congress to advise them on such matters. In fact, 28 U.S.C. § 331 provides that "The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation."

Congressional outreach by judges and the AO is an invaluable tool to educate Members of Congress on judiciary priorities. It is distinct from "lobbying," which is specifically prohibited by 18 U.S.C. § 1913. Congressional outreach by members of the judiciary is instead focused on communication "through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business…". *Id.* Such outreach is not uncommon, particularly with regard to major pieces of legislation that would impact the judiciary significantly, if enacted. It also is not unusual for a committee of Congress or an

individual Member to ask the Judicial Conference, and at times an individual judge, for views on potential legislation.

Canon 4 of the Code of Conduct for United States Judges authorizes judges to engage in extrajudicial activities consistent with the obligations of judicial office, including matters affecting the administration of justice. Canon 4(A)(2) specifically provides:

> (2) Consultation. A judge may consult with or appear at a public hearing before an executive or legislative body or official:
> (a) on matters concerning the law, the legal system, or the administration of justice;
> (b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or
> (c) when the judge is acting pro se in a matter involving the judge or the judge's interest.

In addition to communicating with Congress on behalf of the Judicial Conference – as was the case with the Open Courts Act – judges may also comment in their individual capacities on legislation. These prerogatives are addressed in Advisory Opinion No. 50, *Appearance Before a Legislative or Executive Body or Official,* which provides:

> Under Canon 4, a judge properly may appear before a legislative or executive body or official, at a public hearing or in private consultation, with respect to matters concerning the administration of justice. Examples would be matters relating to court personnel, budget, equipment, housing, and procedures. These matters are all vital to the judiciary's housekeeping functions and the smooth operation of the dispensation of justice generally.

The full Advisory Opinion is included as Attachment 3.

The Open Courts Act would profoundly affect the administration of justice, as it mandated replacement of the judiciary's backbone case management system and related public access services. This would have major operational and budgetary implications for the Branch and judges' outreach to Congress on this subject was warranted and essential.

As to the second premise of the question, we disagree that information provided to judges contained "unsupported assertions and hyperbolic statements." To the contrary, the judiciary was responding to inaccurate public reports that the judiciary's concerns with the legislation had been addressed and the implication that the Judicial Conference supported it.

Before final passage of the Open Courts Act, the Judicial Conference, in letters from November 2019 through December 2020, expressed significant concerns with Congress' proposals, including limitations on access to justice, insufficient development and implementation timeframes, overwhelming operational mandates, and potentially devastating budgetary impacts on the Third Branch. The judiciary remains concerned that the bill underestimated the costs for both the replacement of CM/ECF and PACER and their continued operations. We believe the Congressional Budget Office may have underestimated the cost of developing and implementing a new electronic filing and public access system based on incomplete information or unsupported analogies.

As you know, the Judicial Conference of the United States is the official representative of the federal judiciary. As such, its positions on pending legislation are widely shared within the judicial community as well as with Congress and other interested parties. As explained earlier in this response, federal judges are authorized to reach out to officials regarding the impact of pending legislation on the administration of justice.

We hope this information clarifies the facts and circumstances with respect to the judiciary's congressional outreach regarding the Open Courts Act, and we look forward to working with you in a collaborative manner on productive ways to achieve our shared goal of improving public access to court records.

7. **The AO's fiscal year 2022 Appropriations Request includes a request for fund to establish an Office of Compliance and Risk (OCR) to assess enterprise risks across the AO and respond to audits and other reviews. At the hearing, I asked if those audit results and the AO's responses will be made available to Congress and the public. Please provide your response here.**

In accordance with audit reporting standards as prescribed in the Government Auditing Standards ("Yellow Book") of the Government Accountability Office (GAO), "organizations in government entities should distribute auditors' reports to those charged with governance, to the appropriate audited entity officials, and to the appropriate oversight bodies or organizations requiring or arranging for the audits. As appropriate, auditors should also distribute copies of the reports to other officials who have legal oversight authority or who may be responsible for acting on audit findings and recommendations, and to others authorized to receive such reports."

The judiciary's audit report distribution process adheres to these standards. The distribution of final audit reports is aligned with the judiciary's decentralized financial reporting model. Under this model, "those charged with governance" varies by audited

entity. Therefore, each audit report distribution list is customized prior to release of the final audit report to ensure proper distribution.

The judiciary's financial reporting and audit report distribution model does not provide for release of final audit reports to the public, but results of audits have been made available to Congress. For example, in a letter to Sen. Charles Grassley, dated January 22, 2018, the AO Director provided summaries of all judiciary audit results as reported to the Judicial Conference Committee on Audits and Administrative Office Accountability for the period 2014 through 2017.

While the judiciary continues to distribute auditors' reports to those charged with governance as described above, the AO is working to modernize the judiciary's financial reporting model. In part, this modernization will allow for the public release of consolidated financial statements and audit results. The financial reporting modernization effort within the judiciary is known as the Judiciary Data Integrity, Reporting, and Controls project, or JDIRC. JDIRC, which is also supported by AO advisory groups and Judicial Conference committees, will result in consolidated annual financial statements that reflect all judiciary activity completely and accurately. The effort is aligned with the judiciary's core value of accountability and strategies to improve relations with the legislative and executive branches. We are grateful to the Subcommittee and to Congress for their support of JDIRC.

Through the JDIRC project, the judiciary is targeting fiscal year 2025 to begin producing annually audited, consolidated statements that reflect financial activity across all judiciary organizations, supported by statements of assurance that internal controls are in place and operating effectively. The resulting statements will simplify the financial audit process and enhance the Third Branch's transparency and accountability to Congress and the public, demonstrating its commitment to sound stewardship and ethical and effective use of public funds. These consolidated financial statements will be released publicly and to Congress consistent with the guidelines required of the executive branch.

8. The fiscal year 2022 Appropriations Request states that the OCR's enterprise risk management program will be "based on guidance from the [GAO] Green Book *Standards for Internal Control in the Federal Government* and other industry best practices," but that the program would also "acknowledg[e] the judiciary's unique culture and mission." How will the OCR risk management program's standards differ from the GAO Green Book?

The Enterprise Risk Management (ERM) program at the AO is being implemented in accordance with GAO *Green Book* principles. The program will be built on the principles

GAO advances, such as identifying the AO's risks and risk tolerances, developing responses to those risks, and considering how change could create risks or impact the internal control system.

The aspect of the AO's ERM program that will be unique is how it is implemented, not by differing from the principles of the *Green Book*. The AO's implementation of ERM will be tailored to the AO's unique mission as a service provider to over 400 independent court units and federal defender organizations. Under this decentralized system, the AO and these entities work together to perform many administrative and operational functions, and risks will be identified that are shared across the AO, courts, and defender organizations.

The AO's implementation will also phase in ERM in a manner that engages AO stakeholders throughout the process. The reporting of risks and mitigation strategies will be limited to the AO's internal oversight structure. As noted above, the AO is developing a consolidated financial statement and internal controls framework through its JDIRC program that is consistent with GAO accounting and internal control standards. The ERM program is tightly aligned with that initiative and the JDIRC program's outputs will be captured in the ERM program as appropriate.

9. Please describe the types of risks that will be covered by the enterprise risk management program?

The ERM will capture risks arising from both external and internal sources that could impact the AO's ability to achieve the goals laid out in our Strategic Direction. Initially, risks are being captured in five specific categories: strategy, operations, finance, compliance and hazard (such as security and business continuity). Executive leadership will approve and oversee actions to mitigate the risks identified through the program.

10. Please describe how each circuit addresses enterprise-level risk.

The AO's ERM program is focused on AO responsibilities, and circuits do not have a responsibility to report to us on how they address risk. However, court units do maintain systems of internal controls and participate in an annual self-assessment of those controls using tools provided by the AO. On a cyclical basis, court units undergo an independent audit by the Office of Audit. These audits provide valuable information to the AO about areas where additional guidance or revised processes may be necessary.

In late January, former Director Duff shared the news about the AO's Office of Compliance and Risk with all judges and judiciary executives, noting the importance of

Financial Services and General Government Subcommittee
United States Postal Service

Witness:
Postmaster General Louis DeJoy

Questions for the Record Submitted by Chairman Quigley

Holiday Mail Delays

The United States Postal Service suffered from unprecedented slowdowns and delays this holiday season. Packages mailed well in advance of Christmas took weeks or even months to arrive, bills were delivered after they were due, and time-sensitive food and medicine arrived well after their expiration dates.

Question: Mr. Dejoy, package volume increases every year around the winter holidays. Knowing this, what steps did you proactively take prior to November to mitigate potential mail delays?

Response:

The Postal Service, like other businesses and organizations, has faced hardship during the pandemic. However, unlike other major shipping companies, we did not turn customers away and did not refuse additional package volume during the peak months. This caused a significant increase in our workload while we were also struggling with staffing our operations amidst the pandemic, and dealing with diminished transportation capacity, especially on commercial airlines.

As stated in my testimony, during our peak season, Postal Service management took a number of steps to try and address our issues head on:

- **We hired over 50,000 seasonal workers and then increased full-time career staffing—by more than 10,000 positions in total—in key facilities across the country.**
- **We continued to utilize employee overtime as necessary to stabilize operations and ran a significant number of extra transportation trips throughout the country.**
- **We extended lease agreements on annexes to provide additional package processing and dispatch capacity beyond the holiday peak season—and bought as much air capacity as we had access to.**

All in all, we threw everything we had at the situation—no cost cutting—no efficiency initiatives—no relaxation of any effort anywhere.

Question: Has the Post Office completed an internal assessment of shipping delays during the holiday season? If so, what were the major findings? If not, when will one be completed?

One of the biggest challenges this holiday season was the inconsistency surrounding postal mail delivery. For example, some packages were delivered close to the Postal Service's estimates, while other mail – even items sent at the same time, from the same place – could get stuck at a backlogged distribution center and sit for weeks.

Response:

The Postal Service completed its Peak Season after-action review in February 2021. The review included representatives from all 13 Processing and Logistics divisions along with various Headquarters functions. The representatives assessed opportunities, root causes, and potential solutions for the future.

The Postal Service experienced unprecedented package volumes during the holiday period in FY 2021 due to the convergence of the holiday season with the increase in packages linked to the COVID-19 pandemic. In addition, the Postal Service received additional volumes that would otherwise have been carried by other delivery providers, because those providers imposed volume limits on customers, whereas the Postal Service did not refuse packages tendered to us for delivery. The network was unable to support the increase in volume due to insufficient processing and staging space, processing capacity, and transportation capacity (both air and surface).

Flight reductions by commercial air carriers reduced capacity normally used to transport mail by air, forcing more of the volume onto cargo-only carriers. These carriers also saw increased volume of their own product, leading to competition for available space. Some of this was mitigated by holiday season air-to-surface diversions, but this also put greater strain on the surface transportation network. Surface transportation was also adversely affected by the pandemic's impact on driver availability.

In addition, the pandemic contributed to decreased employee availability. The number of seasonal employees was not enough to offset the decrease in availability of regular employees. There were also certain markets that were unable to meet the seasonal hiring targets.

Question: When you assess your on-time performance, is a package that is one day late counted the same as a package that is one month late? If so, do you agree that that is an appropriate way to measure postal performance?

Response:

Yes, if a package is one day late or 30 days late, it is considered a failure. Measurement of on-time performance (% on-time) is the number of pieces that achieved their expected delivery standard out of the total number of pieces that were delivered. We agree that this is an appropriate way to measure postal performance. This is analogous to other statistics

that are released by other Federal Agencies such as the U.S. Dept of Transportation that shows percentages of on-time performance for airlines and railroads. It is also the standard used by shipping third party consultants to measure and report the performance of carriers such as USPS, FedEx and UPS.

Question: What steps are you taking to ensure that the Postal Service handles packages more consistently when the network is under stress?

Response:

In order to continue providing American consumers with reliable service, the Postal Service is addressing capacity issues by acquiring additional space in 46 locations to accommodate package growth. We also purchased 138 additional package sorting machines this year and added over 14,000 permanent positions to our workforce. This will allow us to handle additional package volume in our processing and delivery network.

Similar to what we successfully accomplished prior to the pandemic, we continue our daily review and analysis of service failures. The analysis allows us to promptly address root causes of our process failures including effectiveness and opportunity to maximize our machine utilization.

We are also addressing bottlenecks in our logistics networks by contracting additional Surface Transportation Centers to increase our capacity to distribute mail throughout our ground network. We perform daily mitigation of our air network's capacity shortfall and have begun our K9 project (using canines to screen packages at airports, which expands our commercial air transportation options) to alleviate bottlenecks in moving our packages through the commercial air network.

As part of our *Delivering for America* plan to restore service excellence and financial sustainability, we are taking substantial steps to improve our mail package service, including adding package handling machines and making our network more accessible to small and medium size businesses.

https://about.usps.com/what/strategic-plans/delivering-for-america/

Mail Carrier Shortages

The Chicago area has faced severe mail delivery issues since long before the pandemic, but COVID has made things much worse. Between January and mid-March, I received more than a thousand postal inquiries from constituents. I typically get 500 in a year. In other words, in less than three months' time, I have received 2 years' worth of inquiries. Addressing these issues–which affect post offices across the country–is a top priority for many members of Congress.

Question: Mr. DeJoy, are you aware that in some areas, there is a significant discrepancy between the number of mail carriers officially on the books and the number of people that are

physically out delivering mail? Are you planning to put in place a national policy to ensure that the number of allotted carriers matches the number actually out on the street?

Response:

The Postal Service is aware of the number of carriers on the rolls to include career and noncareer employees across our network. We account for carriers who are on the clock delivering mail, those who are in a leave status for annual, sick, or COVID-19-related leave, as well as those who are out of the office for other reasons but remain on the books, such as worker's compensation, etc. As an organization we have systems that record the workhours and leave hours of all employees. We have a strong non-career workforce to help replace regular carriers who are absent for the reasons stated earlier and we continue to hire temporary employees to further supplement our employee availability challenges due to COVID-19, when and where they develop.

The Postal Service, along with our postal unions, executed Memorandums of Understanding (MOUs) in March 2021, that allow the organization to exceed current cap limits for hiring non-career letter carriers to help address employee availability issues as they arise and every effort is made to ensure that we use the appropriate amount of workhours to match workload. These agreements allow local management the flexibility to hire staff to address any shortfalls.

Our teams are responding quickly and continue to focus on daily adjustments necessary to react and respond to potential temporary disruptions due to employee availability issues. With each newly hired employee, temporary and/or non-career, there is an organizational commitment to onboard them with foundational training to ensure our employees' safety and that they are likewise good stewards of safety and customer service to fully support our communities. Our onboarding processes are aligned with federal homeland security requirements to include criminal background checks and motor vehicle background clearance.

Question: I understand that regional managers do not closely track this information. Will you require managers to collect reliable data on how many working carriers are in each area?

Response:

Our field operations teams have access to all data related to employee availability, absences, employee onboarding, volume/workload data, delayed mail reports and critical incidents related to disruptions and they do closely track this information on a daily and weekly basis.

Question: Will you make policy changes to ensure that staff levels can be adjusted quickly to address declines in local service? Will you provide regional managers flexibility to hire staff based on level of service, so that any worker shortfalls can be addressed permanently?

Response:

The Postal Service, along with our postal unions, executed Memorandums of Understanding (MOUs) in March 2021 that allow the organization to exceed current cap limits for hiring non-career letter carriers to help remedy this issue and every effort is made to ensure that we use the appropriate amount of workhours to match workload. The agreements allow local management the flexibility to hire staff to address any shortfalls.

We continue to recruit, hire, onboard and train new employees and our local leaders are part of this process. Our local leaders are also personally involved in absence analysis and appropriate responsive actions when and where needed.

Question: Will you commit to policies that ensure that, in the unfortunate circumstance that no carrier is available to cover a route on one day, there will definitely be someone to deliver on that route the next day?

Response:

Our operational leaders are involved in responding to any service disruptions and work to quickly resolve concerns. As a six and seven-day operation in many areas, our focus is the safety of our employees, while at the same time providing the best possible service to our customers. We continue to focus our attention where there are unique challenges and leverage the work of joint Union and Leadership teams to respond and resolve concerns with service-related disruptions.

The Postal Service is committed to delivering for America and has processes in place to ensure routes are covered and mail is delivered. Additionally, we track any failed delivery (i.e., mail deferred to the next day) to ensure it gets an attempted delivery the next day.

Postal Operational Changes

Last summer, the Postal Service made significant operational changes without first assessing the impacts on mail delivery. Mr. DeJoy, in prior testimony, you have admitted that these operational changes were ill-advised and led to significant slowdowns in mail service, which took more than a month to remedy.

Question: The Postal Service's Inspector General has noted that you did not assess the impacts on mail delivery before implementing these changes. Why not?

Response:

Adherence to transportation schedules has long been a priority of the Postal Service. Schedules are established to meet service targets and align with planned transportation costs. There has been an organizational focus on adhering to the transportation schedules over the last two years.

After the Postmaster General took office, he re-emphasized the need to ensure that the Postal Service's trucks run on time and on established schedules, with the goal of mitigating unnecessary late and extra trips. The Postal Service did not conduct a specific analysis regarding the impact on service prior to re-emphasizing this need because we did not anticipate a negative effect on service.

While the improvements in our on-time dispatch schedule were dramatic, this effort did expose a need to realign some of our processing and scheduling that caused mail to miss the scheduled transportation, and temporarily impacted service performance. Once the need to realign was identified, we acted quickly to correct these issues and saw immediate improvements. We will continue to bring disciplined focus to stabilize operations across processing, transportation, and delivery within our network to fulfill our obligation and commitment to provide consistent and reliable service that meets the expectations of the American public.

Several other operational matters widely reported in the press were misconstrued and have previously been factually rebutted in PMG DeJoy's testimony to House and Senate Oversight Committees. Other than accepting the Postal Service's management recommendation to run trucks on time, none of the operational changes falsely attributed to PMG DeJoy in the media were actions that he took or directed. On the contrary, as evidenced by the following details provided in previous congressional testimony, payment of overtime, routine removal of collection boxes, and evaluation of machines at processing facilities all were actions that were routinely in process. In fact, in keeping with existing policies overtime actually increased during Postmaster DeJoy's early tenure, and the other operational actions incorrectly and publicly attributed to him were halted at his direction.

Details follow.

Overtime has been a source of substantial cost, and it is to a certain extent reflective of inefficiency in our operations. A recent OIG report identifies that between FY2014 and FY2019, the number of Postal Service employees who received more in overtime pay than they made in base salary increased from 758 to more than 4,000. Overtime is scheduled and assigned based on operational requirements, and management has focused on ensuring that overtime used is necessary based on workload or other factors and is authorized in accordance with our policies. However, PMG DeJoy did not direct the elimination of overtime, and in fact overtime has not been reduced since he became the Postmaster General.

With regard to collection boxes, the Postal Service has over 140,000 blue collection boxes, and we have reviewed collection box density annually on a routine basis in accordance with Postal policy. Over the past 10 years, more than 30,000 collection boxes have been removed from around the country, averaging about 3,500 boxes per year over the last 3 years. This has been done because of the low volume of mail that that those boxes were receiving, meaning it was inefficient to keep them in place. This is a long-standing policy and process that PMG DeJoy did not initiate or direct, but paused until after the 2020 election given customer concerns.

Finally, regarding mail sorting machines, the Postal Service has always evaluated equipment sets and other operational factors to balance available resources with changes in volumes. For the evaluation of processing equipment, we utilize an iterative process in which volume trends by product type are compared to the fleet of equipment needed to process the mail. Since 2016, overall letter mail volume has dropped by 29 percent and overall flat mail volume has dropped by 32 percent. Accordingly, letter sorting equipment during the same period was reduced by 27 percent and flat sorting equipment was reduced by 25 percent. This includes the removal of over 1000 machines. While letter and flat machines have been reduced to account for the reduction in letter and flat volume, we have increased package sorting equipment to process the increases in package volume.

In April 2020, an evaluation of letter and flat sorting equipment utilization showed that even with the ongoing reductions in equipment, the letter sorting machines are only being used for 32 percent of the available machine hours. The flat sorting machines are only being used for 38 percent of the available machine hours. Even if letter and flat volumes increase substantially, there is more than enough capacity on the machines to handle the volume. Nonetheless, while PMG DeJoy did not initiate the evaluation or removal of this equipment, he halted the removal of additional mail processing machines through the 2020 election.

Question: Is it typical to implement significant changes to logistical operations without conducting pilot programs or small-scale field tests?

Response:

As noted in the previous response, adherence to transportation schedules has long been a priority of the Postal Service. Schedules are established to meet service targets and align with planned transportation costs. There has been an organizational focus on adhering to the transportation schedules over the last two years.

The Postal Service did not consider the summer 2020 transportation initiative to be a new change to logistical operations, but rather a re-emphasizing of the need to adhere to transportation schedules. As such, the Postal Service did not see the need to conduct a pilot program. As described above, other operational considerations such as collection box density studies and equipment evaluations are matters of long-standing routine review to ensure efficient operations.

Question: What steps have you taken or are you taking to ensure that this issue doesn't recur in the future? Will all the proposals in the Postal Service's strategic plan include detailed analysis of any impacts on mail delivery? Will you commit to field testing changes to ensure that the Postal Service's analyses are correct?

Response:

***Delivering for America* – Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence was released on March 23, 2021. To build our plan, we studied**

market research, prior internal plans and proposals, and reports from the Office of the Inspector General (OIG), the Government Accountability Office (GAO), the Postal Regulatory Commission (PRC), and many white papers and documents authored by postal stakeholders.

Through exhaustive diagnostic analysis across the postal enterprise, we quantified the many compounding challenges that have come with long-term declines in mail volume and resulted in unacceptable financial and operational underperformance.

We look forward to productive discussions with our stakeholders about our goals for the future of the organization and the most effective strategies to pursue them. We will listen and learn and adapt the plan to take account of stakeholder advice and guidance, carefully considering advice from the PRC, findings from the OIG, and feedback from our customers. We will adhere to legal, statutory, contractual, and regulatory requirements as we implement the initiatives within the plan.

Next-Generation Vehicle Contract

The Postal Service's current plans for its new delivery fleet includes only a small percentage of electric vehicles. Climate change is an existential issue for this country, and we need to do more to combat it. I want to see the Postal Service make investments that bring it into the future, not maintain the Postal Service of the last 100 years.

Question: Mr. DeJoy, you have testified that a lack of charging infrastructure is an obstacle to purchasing a fully electric vehicle fleet. How much upfront investment would be necessary for the Postal Service to deploy a network of charging stations?

Response:

We welcome support from Congress to the extent it is determined that public policy warrants an acceleration of the goal of a Postal Service vehicle fleet with zero emissions and the necessary infrastructure that will be required to support it. With the right level of Congressional support, we can commit to a majority of the Postal Service's delivery fleet being electric within ten years and a fully electric delivery fleet by 2035. An additional investment of approximately $8 billion is needed to electrify our delivery vehicle fleet to the maximum extent that is operationally feasible. It is important to note that the cost differential between Internal Combustion Engine (ICE) and Battery Electric Vehicle (BEV) drivetrain technology vehicles is significant, and the need for infrastructure adds additional cost to BEV deployment. In very rough terms (and dependent on a wide range of co-dependent factors), a good rule-of-thumb is that a BEV purchase price will be at least one-third more expensive than the comparable ICE. Infrastructure costs would be highly dependent on the existing facilities, but again, a good rule-of-thumb for the electrical work, equipment and other modifications necessary for a commercial/industrial charging station is $15,000 to $20,000 per station. Approximately half of this investment would be devoted to establishing the infrastructure required to support an electrified delivery fleet.

Question: Would you need authorization from Congress to purchase and operate charging stations? What about charging the public to use them when they aren't needed by mail workers?

Response:

The Postal Service has authority to purchase and operate charging stations for our own use pursuant to the general powers granted to the Postal Service in 39 U.S.C. § 401. Specific statutory authority would be required for the Postal Service to charge the public for use of charging stations, as the Postal Service's authority to provide "nonpostal services" is limited by 39 U.S.C. § 404(e).

Question: If the Postal Service did have sufficient upfront resources to invest in a charging network and purchase the largest feasible amount of electrical vehicles, how much would this save the Postal Service, in net terms, over the expected lifetime of the new fleet?

Response:

Given the availability of additional upfront resources to invest in the charging infrastructure and the largest feasible number of electric vehicles, we project that the Postal Service could potentially reduce our net operating costs by an additional 15-25% over the 20-year investment window for these delivery fleet vehicles.

This is based on projections in several categories. Fuel technology market trends are expected to drive improvements in battery costs and capabilities over time. In addition, fuel price changes over time incorporate modest declines in electricity prices, versus projected increases in gasoline prices. Cost-per-mile expectations for Battery Electric Vehicle (BEV) miles-per-kilowatt-hour are certainly lower than Internal Combustion Engine (ICE) cost-per-mile for gasoline; however, given the low average mileage for our USPS delivery fleet at 17 miles/day, the net benefit of fuel for BEV versus ICE vehicles is captured slowly.

Maintenance costs for parts, materials, and labor are also expected to be lower for BEV than for ICE vehicles. This reflects conservative reductions in cost until actual usage data better informs the expectations for longer-term operating cost reductions.

Question: Are there other upfront investments that Congress can make now that will save the Postal Service money in the long run while improving its service and reliability?

Response:

The Postal Service's recently released 10-year strategic plan, *Delivering for America*, outlines our current legislative proposals to help ensure long-term financial sustainability and ability to continue meeting our universal service obligation: fully integrate postal retiree health plans with Medicare and allow the Postal Service to use more reasonable assumptions in calculating RHB liability. We are also asking the Administration to calculate our obligation to the Civil Service Retirement System (CSRS) Pension Plan using

modern actuarial principles that more fairly apportion our responsibility. These actions will eliminate an estimated $58 billion in expenses over the next 10 years, without reducing the benefits received by our employees or retirees under existing law. Overall, the Plan reinforces the Postal Service's obvious strengths and addresses our obvious weaknesses, including all aspects of our management strategy, employee engagement, service products and features, plant processing, transportation, and unachievable service standards. We respectfully request that when you and other members of the committee consider the fiscal year (FY) 2022 appropriation, that you do so without further restricting the Postal Service's operational flexibility or handcuffing our ability to make the changes that are necessary to restore our financial health and to enable service excellence.

We also welcome support from Congress to the extent it is determined that public policy warrants an acceleration of the goal of a Postal Service vehicle fleet with zero emissions and the necessary infrastructure that will be required to support it. With the right level of Congressional support, we can commit to a majority of the Postal Service's delivery fleet being electric within ten years and a fully electric delivery fleet by 2035. An additional investment of approximately $8 billion is needed to electrify our delivery vehicle fleet to the maximum extent that is operationally feasible.

Questions for the Record Submitted by Congressman Amodei

Support for Modernization Funding

Question: Mr. DeJoy, at the House Oversight Committee hearing you said that you would need $3-4 billion dollars to make the postal service's fleet electric. Do you support Congress providing modernization funding for USPS, including at least $3-4 billion for electric vehicles?

Response:

We welcome support from Congress to the extent it is determined that public policy warrants an acceleration of the goal of a Postal Service vehicle fleet with zero emissions and the necessary infrastructure that will be required to support it. With the right level of Congressional support, we can commit to a majority of the Postal Service's delivery fleet being electric within ten years and a fully electric delivery fleet by 2035. An additional investment of approximately $8 billion is needed to electrify our delivery vehicle fleet to the maximum extent that is operationally feasible.

Support for Six-day Delivery

Question: Mr. DeJoy, I was pleased to hear you say previously that you believe the integrated network delivery of mail and packages at least six days a week is a core strength of the Postal Service. There is also broad bipartisan support in Congress for six-day delivery. Do you support for mail and package delivery at least six days a week? Will the Postal Service's strategic plan will include support for this?

Response:

In order to confront the Postal Service's long-standing financial and service performance issues, we developed the *Delivering for America* plan, our ten-year strategy that reinforces the Postal Service's strengths and addresses our weaknesses. As part of the plan, we commit to six-day a week delivery service for mail to every address in the nation, and an expansion of seven-day a week package delivery. This includes meaningful growth in our service offerings for small and mid-sized businesses so they can take full advantage of our network and participate in the digital economy.

The Package Business is Profitable

Question: Reflecting on the Postal Service's FY 2020 financials, it is clear that the growth in package volumes and contribution helped offset the pandemic-related mail volume declines. Can you confirm that the package business is profitable and that an integrated delivery network for mail and packages is critical to the long-term financial viability of the Postal Service?

Response:

Yes, the package business is profitable and an integrated delivery network for mail and packages is critical to the long-term financial viability of the Postal Service. However, it is important to note that increased package volumes cannot completely counteract the financial consequences of declining First-Class Mail volume; this means that we must continue to adapt our networks and our labor costs to current and anticipated volumes.

Questions for the Record Submitted by Congressman David Joyce

Mail Fishing

The crime of mail fishing, where thieves remove mail from postal collection boxes using a string connected to a sticky substance, has gained attention from news outlets and members of Congress. Criminals are using this method to gain access to personal information such as social security numbers and bank account numbers to commit financial fraud and identity theft. I am particularly concerned about the impact this is having on senior citizens who are far more likely to pay bills and send sensitive information through the mail.

Question: I understand the US Postal Service has developed a new high security deposit box with a narrower slot and other enhanced features to put an end to this criminal activity. Can you please tell the committee your plan to replace existing boxes with the new high security design? Are you planning to replace all boxes with the wider opening? How long do you believe it will take to either replace or retrofit the current less secure boxes currently in use?

Response:

USPS street collection boxes have been in service for over a hundred years. The problem of mail fishing is largely concentrated in specific geographic areas, such as New York and Boston. In Fiscal Year 2020, there were just 90 collection box attacks in the state of Ohio. However, any theft of mail is a major concern for the Postal Service. In response, we have both introduced a variety of field-installable anti-fishing kits for collection boxes and incorporated a variety of design features with collection boxes that are designed to provide the most resistance to mail fishing that has ever been available.

The preventative measures in use to date with collection boxes include such things as (a) restricting the customer-access opening to the box making available boxes that have replaced the relatively wide-open hinged door-with-handle with a narrow slot on a hard-mounted panel, (b) anti-fish "rakes" that are put in place *below* where the fishing devices would need to travel to remove mail items from a collection box in order to "snag" them prior to removal from the box, (c) anti-fish devices that are put in place *above* where the fishing devices would need to travel in order to make the removal process much more complicated for the potential mail thief/thieves, and (d) other field-originating features such as field-installable kits that provide some minimal level of improvement in preventing fishing device use. In addition to these anti-fishing steps taken, there are a large number of physical security improvements also incorporated into the overall collection box designs beginning with how they are secured to the concrete and continuing throughout the entire structures to comprehensively try to improve the security of the deposited mail within a collection box.

The Postal Service has installed high security Collection Boxes in targeted areas where mail fishing has been a commonly used tactic for thieves. These Collection Boxes are available for any location in the country experiencing mail fishing. Estimated costs and resources to

implement a plan for high security Collection Boxes in the entire U.S. would be enormous, possibly up to $100M for the cost of the boxes alone, in addition to the cost to remove and replace each box.

- Modifying local contracts with treatment providers (i.e., substance use disorder, mental health, sex offender management) to allow for the use of telemedicine and preparing for the transition from group treatment to individual treatment.
- Offering suggested practices related to home confinement and location monitoring (in addition to those discussed in the first paragraph above) to reduce the risk of exposure, including:
  - allowing for self-installation of location monitoring equipment under remote observation (e.g., FaceTime),
  - suggesting the use of cellphone-based applications in lieu of physically placing anklets on people under supervision,
  - recommending methods to respond to alerts that do not require personal contact,
  - recommending home confinement without electronic monitoring when feasible, and
  - recommending supervision without home confinement or location monitoring when possible.
- Modifying training requirements (e.g., extending deadlines for qualifications and certifications) and delivering training remotely.

3. Have any changes been made to internal policies regarding the manner in which supervision is conducted, or has the Office taken any actions to terminate supervision early for certain categories of formerly incarcerated persons?

See above for information related to adjustments to policy. There were no recent policy changes related to early termination of supervision; however, data suggests an increase in the use of early termination during the pandemic. For the 12-month period ending December 31, 2020, 17.6 percent of case closings were due to early terminations of supervision. This is compared to 15.9 percent for the 12-month period ending December 31, 2019. It should be noted that courts are not authorized to terminate supervision until the person has served one year of supervised release (18 U.S.C. § 3583(e)(1)). The Judicial Conference has communicated its interest in amending § 3583(e)(1) to allow for early termination before one year of supervised release has elapsed in compassionate release cases.

4. What was the total number of overtime hours reported by U.S. Probation and Pretrial Services Officers for all judicial Districts in calendar years 2019 and 2020, as well as the projected number of total overtime hours for calendar year 2021?

The judiciary's time reporting system does not allow for or capture overtime hours because federal probation officers are statutorily ineligible for overtime or premium pay. Instead, to compensate officers for time worked beyond their normal daily work schedules, in excess of the normal work schedule of 80 hours per pay period, or on an official holiday, the judiciary offers compensatory time. All requests and approvals for the earning and use of compensatory time are tracked as part of the judiciary's leave and attendance reporting systems. Among the roughly 85 percent of court units that use the leave tracking module of the Human Resources Management Information System

(HRMIS), the judiciary's primary personnel and payroll system, officers earned 122,125 hours of compensatory time in calendar year 2019 and 72,779 hours in calendar year 2020. Projections of compensatory time earned in calendar year 2021 are premature given current uncertainty around the speed with which pandemic-related restrictions will be lifted in different parts of the country.

5. Is there a standardized system for tracking overtime hours worked by Probation and Pretrial Services Officers? If not, please explain.

As noted above, federal probation officers are statutorily ineligible for overtime pay. As a result, we do not track overtime hours. However, as also noted above, the judiciary offers compensatory time for hours worked in excess of normal work schedules or on official holidays, and all such requests and approvals for the earning and use of compensatory time are tracked in the judiciary's leave and attendance reporting systems. Approximately 85 percent of court units use the leave tracking module of HRMIS for this function.

6. As a result of the FIRST STEP Act of 2018 and the exigencies of the COVID-19 public health emergency, concerns have been raised regarding the number of individuals requiring supervised release relative to the number of Probation and Pretrial Services Officers. Please provide the Committee with the most recent data available on the average caseloads of Probation and Pretrial Services Officers, broken down by job classification and District.

The size of an officer's caseload is dependent on many factors including (1) the nature of the work performed (i.e., only writing bail or presentence reports, only supervising cases, or performing both tasks), (2) the varying risk levels of people under supervision (i.e., officers supervising lower risk cases will have more cases than officers supervising higher risk/higher need cases such as sex offenders or people on location monitoring), and (3) the geography of the district (i.e., officers in some states must travel vast distances to supervise cases, requiring smaller caseloads). The high variability of these factors among officers and districts reduces the utility of average caseload per officer as a management metric because it obscures salient differences in local conditions, practices and priorities. For that reason, the AO does not regularly calculate such averages either on a district or national basis, and to collect the relevant data to perform those calculations now would require several additional weeks. As a point of reference, however, the national average caseload per officer was 51.4 (combined report writing and supervision, factoring in support staff) in 2015, the last time such an analysis was performed.

7. In addition to the funding Congress approved for the hiring of additional personnel in FY 2021, has the AO conducted any assessment of the long-term staffing needs of the Probation and Pretrial Services Division?

The AO prepares annual long-range workload forecasts. The methodology used to compute the long-range estimates is the autoregressive integrated moving average (ARIMA) model. This methodology assumes that the past has an influence on the

present and the future. Specifically, the patterns and trends represented by past data are used to determine future patterns and trends. As a result, the accuracy of the latest forecasts may be negatively impacted by the anomalous decreases in workload experienced over the past year due to the pandemic. The most recent long-range forecast (which extends through FY 2031) predicts increases in pretrial services activations (i.e., bail reports) and presentence reports, relatively flat levels of post-conviction supervision, and a slight decline in pretrial supervision. How this workload would translate into staffing requirements would depend on the staffing formula in place at the time. Staffing formulas for the probation and pretrial services program are updated approximately every five years.

United States House of Representatives
Committee on Appropriations
Subcommittee on Financial Services and General Government

Hearing on "Department of the Treasury Oversight"

Thursday, May 27, 2021

Questions for the Record

Majority

Representative Mike Quigley (D-IL-05), Chairman

Impact of Tax Regulations on Farmer Cooperatives

The Trump Administration issued a Treasury regulation on the last day of the Administration to address the "grain glitch" impacting farmer cooperatives. If not modified, this regulation will cause a tax increase for farmers.

Question: Does the Treasury Department plan on reviewing and potentially amending this regulation?

- **Answer:** The Treasury Department recognizes the critical role of the nation's farmers and farming communities and continues to consider what may be the best and most appropriate way to address concerns about these co-op rules. I understand that the referenced regulation under section 199A was the product of extensive discussions among Treasury and IRS staff, Congressional staff, and advocates for the farming cooperative community. The Treasury Department began to meet with representatives of farmer cooperatives before the publication of the proposed regulations. Later, the Treasury Department reviewed correspondence from, and held extensive meetings with, representatives of farmers cooperatives regarding the proposed regulations. In addition, the Treasury Department reviewed correspondence from, and held discussions with, members of Congress and their staffs both before and after the publication of the proposed regulations. The final regulation was the product of this extensive engagement with the public and members of Congress. Nonetheless, I understand my staff has heard that there continue to be concerns and so they are still engaged on the topic. I would be happy to have our Office of Tax Policy talk to your staff and get their perspective on this.

Climate-Related Financial Risk

President Biden's executive order last week directed a number of actions related to addressing climate change, one of which was directing you, as Chair of the Financial Stability Oversight Council (FSOC), to engage with FSOC members to look at climate-related financial risk to the financial stability of the U.S. financial system.

Question: How will you engage the primary regulators – such as the SEC and CFTC – who serve on FSOC to further this mission?

- **Answer:** Consistent with the Executive Order, FSOC is coordinating with its member agencies to assess climate-related financial risks and facilitate the sharing of climate-related financial risk information among FSOC members. Climate change will affect sectors of the financial system in varying ways, and any actions by regulators should ensure that issues that affect multiple markets and institutions are addressed in a coordinated way, such as the need for consistent, comparable, and decision-useful information regarding climate-related risks and the common challenges faced in combining climate, economic, and financial data to assess risk exposures. FSOC can serve as a beneficial forum for regulators to come together to collaborate on these issues and share information. We are also engaging with FSOC members on next steps regarding the FSOC report described in the Executive Order.

Question: What areas within the U.S. financial system do you expect to look at most closely?

- **Answer:** FSOC will perform a broad assessment of the potential financials risks related to climate change, including physical and transition risks in key markets and sectors. FSOC is considering ways to improve climate-related financial risk data and disclosures and the sharing of information among regulators to enhance our understanding of potential exposures.

Question: Are there areas where you see climate-related financial risk currently within the U.S. financial system?

- **Answer:** Climate change is an existential threat to our environment, and it may pose a substantial risk to our country's financial stability if not analyzed and addressed. Specifically, climate change introduces new and increasing types of risk. The risks from more frequent and severe natural disasters—physical risks—have, and will continue to, become more prominent. Then there are the risks that may accompany the technological, market, and policy changes needed to address climate change—the transition risks. These physical and transition risks are potentially far reaching across the financial system, and we must put in place the capabilities to perform rigorous and ongoing analyses with accurate and timely data to understand the markets and sectors exposed to these risks. This area was not a priority in recent years, and we have a great deal of work to do.

Question: What remedies are you considering to address any climate-related risk?

- **Answer:** FSOC has an important role to play in mitigating climate-related financial risk and is focused on ensuring that risks are better understood by market participants. As a first step, FSOC is helping to coordinate regulators' collective efforts to improve the measurement and management of climate-related risks in the financial system. As the Council better understands the scope and nature of these risks, it will be better positioned to work with regulators to effectively address identified risks.

Equitable Tax System

Earlier this year, the President signed an Executive Order, advancing racial equity and support for underserved communities through the Federal Government.

Question: How will Treasury support the Administration's goal of advancing equities in their tax policies and programs?

- **Answer:** Treasury is engaged in developing tools for the analysis of tax policy in terms of its impact on equity issues. Since the IRS does not collect information on taxpayers' race or ethnicity, the initial step in the development process is the construction and testing of an adequate race/ethnicity imputation.

Question: How does Treasury ensure that the Administration's tax policies promote racial equity?

- **Answer:** Once Treasury has constructed the tools necessary for evidence based equity analysis, Treasury will use these tools to examine various Administration tax policies for their impact on racial equity and, if necessary, consider improvements that would result in improved racial equity outcomes.

Question: Is the Treasury open to collecting and sharing tax statistics by race? If so, when can we expect to see such data?

- **Answer:** Using the analytic tools developed for equity analysis it may be possible to publish some tax statistics by race. However, the public release of such tables is at least a year in the future.

Question: What resources are available for low-income households and people of color who need tax filing assistance?

- **Answer:** The IRS partners with volunteer organizations to offer free tax preparation, tax education (outreach), and financial education and asset building through the Volunteer Income Tax Assistance (VITA)/Tax Counseling for the Elderly (TCE) program. VITA/TCE provides assistance to underserved populations such as, low-to-moderate income, persons with disabilities, rural, elderly, and Limited English Proficiency taxpayers. In a non-pandemic year, approximately 11,000 VITA/TCE sites typically prepare a total of over 3.5 million federal tax returns. This year, nearly 9,000 sites prepared approximately 1.9M federal tax returns. Based on available demographic data through March 18, nearly 9,000 VITA/TCE sites prepared approximately 448K returns identified as low-income and approximately 350K identified as people of color.

Question: Is Treasury looking to expand these services in fiscal year 2022?

- **Answer:** The VITA/TCE program supports the IRS' vision of expanding free tax preparation services to reach more underserved communities. The IRS continuously engages in activities to increase volunteer recruitment and establish new VITA/TCE

partnerships. Despite the pandemic, the IRS held numerous virtual volunteer and partner recruitment events. Since October, over 14,000 individuals expressed an interest to volunteer at their local VITA/TCE site by attending volunteer recruitment events and over 800 new partnerships have been developed for the 2022 Filing Season. In May, the IRS made significant progress in reaching the homeless, engaging directly with more than 7,300 private and local government agencies to provide Economic Impact Payment information to more than 6.8 million individuals. Recently, the IRS engaged community organizations in a national symposium identifying resources available for anyone interested in partnering with the IRS to start a VITA program in rural areas.

Question: How is Treasury promoting a culture that is free of racial discrimination and providing opportunity for advancement for people of color?

- **Answer:** Treasury is committed to a culture that is free from discrimination and values the diversity of its workforce. Treasury's Equal Employment Opportunity policy is enforced in all polices, programs, and operations, affirming zero tolerance of all types of discrimination and harassment. I and the Deputy Secretary have communicated our goals of racial equity in the programs Treasury administers, as well as within our workforce.

  Treasury has created a multi-year Diversity and Equal Opportunity Strategic Plan to advance diversity and promote equal opportunity in recruitment, hiring, promotion, training, performance, and recognition.

  Treasury offers a wide range of training on diversity and inclusion topics, including unconscious bias, and plans to identify diversity and inclusion competencies for leaders and train managers to promote diversity and inclusion.

  Treasury promotes Employee Resource Groups that represent a wide range of diverse backgrounds including LGBTQ, Latinx, and AAPI employees. These groups engage employees at all grade levels, expand knowledge and provide peer support, and enhance skillsets for employee promotion and retention.

Question: What types of metrics are being used to ensure that Treasury promotes diversity throughout the Department? Are they working?

- **Answer:** Treasury measures its workforce against benchmarks including the Relevant Civilian Labor Force (RCLF) as well as the National Civilian Labor Force (NCLF), the Occupational Civilian Labor Force (OCLF). In the event that statistical disparities in workforce are identified, Treasury performs a barrier analysis and establishes plans to eliminate any barriers.

  As of FY 2020, Treasury's permanent workforce was 61.5% female and 38.5% male. The female participation rate slightly fell short of the RCLF availability rate (63.6%) although it exceeded the NCLF availability rate (48.1%). Treasury is currently conducting barrier analyses for women in the GS-13 through SES grade levels across all of its bureaus.

The FY 2020 minority participation rate for Treasury's permanent workforce was 47.9%, exceeding both the RCLF and the NCLF availability rates (25.4% and 27.6% respectively). In particular, the minority participation rate met or exceeded the applicable RCLF availability rate for 10 of 12 minority ethnicity/race indicators and gender groups. Treasury is conducting barrier analyses across all its bureaus for the remaining groups.

Internal Revenue Service – Fiscal Year 2022 Funding

The fiscal year 2022 request includes an $1.2 billion increase over the enacted level and supports an $80 billion investment in the IRS over 10 ten years.

Question: Please explain the impact the infusion of money will have on Enforcement collections and closing the tax gap.

- **Answer:** The President's proposals would overhaul tax administration in the United States to create a more equitable tax regime. These proposals, taken as a whole, would generate revenue from enforcement activities to collect taxes that are owed but not paid and through improved voluntary compliance. Increased funding for the IRS would also improve how taxpayers are served by the IRS—making sure that all taxpayers are able to take advantage of the tax benefits to which they are entitled and are able to communicate effectively and efficiently with the IRS when questions arise.

  The compliance initiative has several elements, including:
  - increasing the resources of the IRS to pursue noncompliant taxpayers and better serve the vast majority who are fully compliant;
  - leveraging information that financial institutions already collect to shed light on those taxpayers who misreport income derived from opaque categories;
  - overhauling antiquated technology to help IRS leverage 21st century data analytic tools; and
  - regulating paid tax preparers and increasing penalties for those who those who intentionally commit malfeasance.

  It is important to note that the President's compliance proposals are designed to ameliorate existing inequities by focusing on high-end evasion. Audit rates will not rise relative to recent years for those with less than $400,000 in actual income.

Question: When does the IRS anticipate the American people will see a return on this investment?

- **Answer:** The IRS and our Office of Tax Policy have developed year by year revenue estimates for our proposals which can be found at https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf. The first revenue will come in during FY 2022. Total additional revenue generated from the $80 billion increase in the IRS budget over 10 years is estimated to be around $320 billion during this horizon, which suggests roughly a 4-to-1 ROI.

Question: What is Treasury's estimate on the additional revenue this investment will generate?

- **Answer:** While it will take time and substantial effort to achieve these goals, even modest progress would translate into a substantial increase in revenue. Treasury's Office of Tax Analysis estimate that over the next decade, these changes would shrink the tax gap by about 10%, raising $700 billion in additional revenue over the next 10 years net of investments(including revenue from direct IRS investments and from changes in information reporting). The revenue raised is even larger in the second decade after enactment at about $1.6 trillion. Revenue raised is backloaded in part because investments in the IRS often take several years to reach their ultimate payoff. These estimates are, in a sense, conservative. For example, the direct increase in additional tax revenue that the IRS is able to collect from compliance efforts does not include the indirect effects of greater enforcement activities, which are generally regarded to be significant.

Question: With increased funding, what is IRS's strategy to onboard staff and what is the estimated maximum level of new hires the IRS can absorb in a fiscal year?

- **Answer:** The plan is devised so that the IRS staffing would grow manageably (no more than 10 percent annually) and includes investments in human capital and IT support that would allow significant hiring) but also have certain funding in place to make investments with large fixed costs—like modernizing information technology, improving data analytic approaches, and hiring and training agents dedicated to complex enforcement activities. This would make up the ground that the IRS has lost over the last decade and allow IRS to hire the enforcement personnel necessary to undertake the complex enforcement the plan envisions.

Question: What assistance do you need from Congress to ensure all dollars appropriated for Enforcement efforts are utilized?

- **Answer:** It is critical to the success of this effort that we restore and build IRS enforcement capability with a sustained, multi-year commitment to rebuilding the IRS. Predictable funding will allow the IRS to plan and execute its hiring and training plans to deliver improved compliance and revenue collection in FY 2022, over the course of the next decade, and well beyond.

Internal Revenue Service – Collections

IRS Commissioner Rettig appeared before the Senate FSGG Subcommittee on May 19th to testify about narrowing the tax gap and improving taxpayer service.

Question: In his testimony, Commissioner Rettig said it would likely take another 60 days to clear the backlog of returns that came in during 2019 (slightly over 300,000 paper returns), but

that he might need to update that estimate. Is it your understanding that the IRS is still approximately 2 months out from getting through the 2020 tax returns?

- **Answer:** We understand the importance of timely processing of tax returns and refund issuance. We have processed all error free returns received prior to 2021 and continue to work the returns that need to be manually reviewed due to errors. We are rerouting tax returns and taxpayer correspondence from locations that have more inventory to locations where more staff is available, and we are taking other actions to minimize any delays. Tax returns are opened and processed in the order received. As the return is processed, it may be delayed because it has a mistake including errors concerning the Recovery Rebate Credit, is missing information, or there is suspected identity theft or fraud. If we can fix it without contacting you, we will. If we need more information or need you to verify that it was you who sent the tax return, we will write you a letter. The resolution of these issues depends on how quickly and accurately you respond, and the ability of IRS staff trained and working under social distancing requirements to complete the processing of your return.

Question: Erin Collins, the National Taxpayer advocate, testified at the same hearing that the IRS was still struggling to manually process more than 30 million individual and business tax returns. What is the current number of returns that are in process? What is IRS's strategy to process these returns and when can we expect this to be completed?

- **Answer:** As of June 5, 2021, we had 18.2 million unprocessed individual returns and 7.4 million unprocessed business returns in the processing pipeline. Unprocessed returns include tax year 2020 returns such as those requiring correction to the Recovery Rebate Credit amount or validation of 2019 income used to figure the Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC). This work does not require us to correspond with taxpayers but does require special handling by an IRS employee so, in these instances, it is taking the IRS more than 21 days to issue any related refund. If, as a result, a correction is made to any RRC, EITC or ACTC claimed on the return, the IRS will send taxpayers an explanation. Taxpayers are encouraged to continue to check Where's My Refund? for their personalized refund status and can review Tax Season Refund Frequently Asked Questions.

Question: The pandemic and its related challenges understandably exacerbated some existing service issues at the IRS. Taxpayers who did the right thing and complied are getting caught up in the backlog and receiving erroneous collection notices – and that could continue for a while without action by the IRS. The AICPA suggested that the IRS should halt its automatic collection activities for at least 90 days after the May 17 deadline. Does that seem like an appropriate amount of time given the current state of the IRS backlog? Is 60 days more reasonable?

- **Answer:** Systemic and automated liens and levies have been continuously paused since April 2020, but we plan to return to normal casework activities later this summer. The Federal Payment Levy and the State Income Tax Levy programs are set to resume in mid-July, and the systemic lien and levy program is set to resume in mid-August. To

avoid having a levy issued, taxpayers can respond to IRS billing notices and work with the IRS to resolve their tax debt.

Aside from the initial balance due notice which the IRS is statutorily required to issue upon the assessment of the tax return, subsequent balance due notices were paused from mid-May 2020 until late November. We made the decision to restart the notice process at that time after evaluating the progress in clearing the backlog of incoming mail and considering the potential harm to taxpayers that is created when they are not informed as to the status of their liability and the penalties and interest that are accruing while it remains unpaid.

The IRS continues to balance the need to issue Notices of Intent to Levy and other compliance correspondence with the possibility that we have not processed a payment or account adjustment. As always, taxpayers who believe that a notice they receive is incorrect should contact the IRS at the number on the notice.

Internal Revenue Service – Child Tax Credit

Included in the American Rescue Plan is $379 million to implement the Advanced Child Tax Credit beginning in July 2021.

Question: To ensure the program's success, full funding for this initiative is essential. Will the $379 million cover the total cost of this initiative? If not, please provide a detailed explanation and the amount of the additional funds needed.

- **Answer:** The Administration and the IRS are committed to implement ARP's CTC requirements in FY 2021 and will do so within current appropriations. Other costs are outlined in the table below.

Summary of Estimation Change	Increase/(Decrease)
Payment notices are being sent to 39M instead of 46M	• (7.2M)
6 payments instead of 3	• $9.9M
Informational postcard is now a letter to 36M	• $1M
New Change Confirmation letter	• $30.1M
3rd Party Authentication for those who want to opt-out using the on-line portal	• $151.3M
Total Increase:	• $185.1M

Internal Revenue Service – Fiscal Year 2022 Hiring

The Fiscal year 2022 budget includes an increase of over 6,000 FTE (Base and Program Cap Integrity).

Question: What is IRS's strategy for onboarding all the new hires in fiscal year 2022?

- **Answer:** The IRS is adding approximately 200 hiring personnel in its Human Capital Office and creating a hiring surge team of experienced IRS employees and contractors to support the expected hiring increases. In 2020, the IRS streamlined and consolidated over 40 processes into one standardized orientation framework to optimize both resources and the new-employee experience. The IRS is also on track to fully implement USA staffing by December 2021, leveraging robust IT capability for increased volume and transparency in hiring processes to include onboarding. The IRS is leveraging technology to accommodate larger orientation sessions through a combination of Zoom (with bandwidth of up to 1,000 concurrent users) and other technological tools that can handle concurrent users in excess of 1,000.

  For FY 2022 hiring, the IRS will consolidate announcements of like positions at the enterprise level to reduce hiring workload and enhance the applicant experience. On June 30, 2021, the IRS is implementing a modified new hire orientation program which will be fully launched by October 1, 2021. This new program will consist of a 12-month new hire engagement to fully acclimate employees into the agency and increase awareness of their role in carrying out the goals and objectives of the IRS.

Question: Please share the quarterly or monthly hiring plan broken out by Taxpayer Services and Enforcement, including expected attrition, for onboarding the FY 2022 request for additional FTEs?

- **Answer:** The IRS is in the process of developing FY 2022 hiring projections that will inform comprehensive recruitment and hiring strategies. All IRS organizations were tasked to develop and submit their planned targeted workforce. The IRS is in the process of validating the data received. Once the projections are finalized, we will apply a standard combined (internal & external) attrition process at the enterprise level to project hiring needs and support HCO operations. By August 1, 2021, the IRS will analyze all hiring projections and develop comprehensive IRS hiring and recruitment strategies which will enable quarterly/monthly reporting on hiring plans for the Taxpayer Services and Enforcement population.

Question: Will the FY 2022 Operations Support require a reprogramming to meet the program's needs? If so, please explain why.

- **Answer:** The FY 2022 Budget proposes the allocation of resources across the IRS appropriations accounts that will allow the IRS to provide a high level of customer service, modernize IRS IT systems, and hire additional enforcement staffing, but that will also ensure that the IRS has the necessary resources to fund the infrastructure, IT, and other necessary costs to support these activities. The requested level for the Operations Support account in FY 2022 is crucial to that The Program Integrity Allocation Adjustment (PIAA) that IRS has proposed provides the resources for enforcement activities that generate revenue as well as the resources required in operations support to support the PIAA's enforcement activities. The IRS does not have increased transfer needs because of the PIAA.

The IRS has also proposed a Working Capital Fund that will allow the IRS to achieve cost savings, promote economies of scale, establish more consistent processes and policies, and improve how it delivers facility services, technology, and other centralized services for its business units. It will also reduce transfers to Operations Support by aligning Operations Support costs to their mission drivers in IRS' other appropriations.

Representative Sanford Bishop (D-GA-02)

Section 199A

In 2018, Congress amended Section 199A to correct a provision of the Tax Cuts and Jobs Act (TCJA, Public Law 115-97). Section 199A(g)(6) states that regulations published by Treasury "shall be based on regulations applicable to cooperatives and their patrons under Section 199." Earlier this year, the IRS finalized a rule that limited the qualified business deduction allowed by cooperatives solely to patronage income. Cooperatives often pass these deductions to individual farmers, so this rule effectively raised the taxes on farmers across the country. A bipartisan coalition of House Members believe that the amended Section 199A was intended to ensure that tax benefits replicate, to the greatest possible extent, the benefits provided under the previous Section 199 to cooperatives and their farmer-patrons, and therefore, the finalized IRS rule does not align with Congressional intent.

Question: Is Treasury reviewing this rule, and what steps is Treasury taking to ensure the rule aligns with the original Congressional intent of the 2018 amendment?

- **Answer:** The Treasury Department recognizes the critical role of the nation's farmers and farming communities and continues to consider what may be the best and most appropriate way to address concerns about these co-op rules. I understand that the referenced regulation under section 199A was the product of extensive discussions among Treasury and IRS staff, Congressional staff, and advocates for the farming cooperative community. The Treasury Department began to meet with representatives of farmer cooperatives before the publication of the proposed regulations. Later, the Treasury Department reviewed correspondence from, and held extensive meetings with, representatives of farmers cooperatives regarding the proposed regulations. In addition, the Treasury Department reviewed correspondence from, and held discussions with, members of Congress and their staffs both before and after the publication of the proposed regulations. The final regulation was the product of this extensive engagement with the public and members of Congress. Nonetheless, I understand my staff has heard that there continue to be concerns and so they are still engaged on the topic. I would be happy to have our Office of Tax Policy talk to your staff and get their perspective on this.

Representative Norma Torres (D-CA-35)

Global Magnitsky Sanctions in the Northern Triangle

Question: The Global Magnitsky Act is one of the most effective tools we have in our arsenal to fight corruption, and your Department plays a major role in sanctions under that Act. However, to date, only a handful of individuals have been sanctioned under Global Magnitsky from the Northern Triangle. If we want these to be impactful, we need to expand our targets to reflect the depth of corruption and challenge to rule of law in the region.

- How many full-time staff members are dedicated to processing Global Magnitsky sanctions for Central America specifically?
- Does Treasury's current staffing level focused on the Northern Triangle and Spanish-speaking personnel dedicated to the region adequately reflect the Biden Administration's prioritization of the region and emphasis on anti-corruption? If not, how does Treasury plan to adjust its staffing to meet the policy directive?
- Does the President's fiscal year 2022 budget request for the Office of Foreign Asset Control include funding for additional personnel focused on the Northern Triangle?

    - **Answer:** Treasury/OFAC provides robust support for these targeting efforts and would estimate that we have the equivalent of approximately 30 full-time employees working on issues related to Central America and the Global Magnitsky, Transnational Criminal Organizations, and Narcotics programs across divisions of OFAC. We have quantified these resources based off information we collect on a semiannual basis for purposes of reporting under the National Emergencies Act.

      As you know, the Biden-Harris Administration is very committed to helping Northern Triangle countries uphold the rule of law, combat corruption, and improve the economic and security conditions there. The President has tasked the Vice President with leading a whole-of-government strategy with respect to the Northern Triangle. Treasury will continue to follow their lead in prioritizing this policy directive.

      Within TFI's request in the FY 2022 President's Budget, OFAC is requesting to be funded at a modestly higher level than FY 2021 enacted. FY 2021 funding levels supported an increased number of positions within several portfolios, which included the Northern Triangle.

Question: In the past, I have heard from Treasury that there is not sufficient evidence to build cases and that this a significant roadblock. However, the State Department has a list of individuals from the Northern Triangle that they have deemed corrupt.

- Are Treasury and State in consensus about the legal standard and evidence needed to sanction individuals?

    - **Answer:** Treasury works closely with the State Department on proposals to sanction particular individuals or entities under all of OFAC's authorities.

Designations must be supported by information meeting the applicable legal standard. To add a person to the Specially Designated Nationals and Blocked Persons List (SDN List), OFAC also requires sufficient identifiers such as, names and dates of birth, at a minimum. These types of identifiers allow the private sector to successfully identify an SDN nexus in a transaction and minimize false positives.

OFAC investigates proposed targets to determine if the evidence available meets the legal criteria under the relevant authority for designation. In addition, OFAC collaborates with the State Department to best prioritize targets that may meet legal sufficiency.

- Does Treasury only consider recent evidence of corruption relevant to cases, even if earlier previous evidence contributes to the pattern of corruption that is still ongoing?

    - **Answer:** In addition to considering recent evidence that may support a designation, Treasury does also rely on older evidence when appropriate, such as to show a pattern of behavior, to reach legal sufficiency for a designation. Evidence can be obtained through multiple sources, such as non-governmental organizations, news sources, or government reporting.

Question: We know that there are individuals in the Northern Triangle who have committed acts that should warrant sanctions under the Global Magnitsky Act. However, we have not seen many individuals sanctioned.

- When it comes to elected officials who have, for example, awarded contracts that benefit that official personally, misappropriated public funds, or embezzled public funds, would Treasury generally apply sanctions to these types of cases?

    - **Answer:** Treasury is concerned by all forms of corruption—including personal enrichment, bribery, embezzlement, and other threats—and we are bringing our sanctions and other financial pressure authorities to bear against this problem in the Northern Triangle and globally.

      Treasury's ability to sanction persons for such behavior depends on the information available regarding specific facts and circumstances, as well as sufficient identifiers for potential targets, such as names and dates of birth. We welcome information regarding activities such as those mentioned so that we can assess whether sanctions might be warranted and feasible under available authorities, like the information your staff passed to us in October 2019.

      In addition to Global Magnitsky sanctions, Treasury is committed to using other sanctions authorities to address this problem set, including the Transnational Criminal Organizations (TCO) authority pursuant to Executive Order 13581, as amended by Executive Order 13863, as well as the Foreign Narcotics Kingpin Designation Act, to target corruption with a nexus to narcotics trafficking.

Treasury will not hesitate to act against those involved with corruption in the Northern Triangle.

Minority

Representative Steve Womack (R-AR-03), Ranking Member

American Rescue Plan Labor Requirements

On May 10, the U.S. Department of the Treasury released an interim final rule on the $350 billion worth of federal funding for state and local fiscal recovery allocated in the American Rescue Plan, which was signed into law by President Joe Biden on March 11.
As part of the interim final rule, Treasury released a fact sheet detailing how this money can be used to offset state and local budget shortfalls, support COVID-19 response efforts and address economic stabilization for households and businesses.
Notable guidance discussing how funding can be used for eligible construction projects, including broadband, water and sewer infrastructure, is addressed in the fact sheet and in the interim final rule and contains troubling language promoting the use of government-mandated project labor agreements, local hire and Davis-Bacon/prevailing wage regulations.

Question: I have concerns these labor provisions will needlessly increase the cost of construction and steer work to union labor from out of state at the expense of local and qualified nonunion firms and workers, which compose 87% of the U.S. construction workforce. Can you confirm that states and localities are NOT required to mandate these anti-competitive and costly labor provisions as a condition of accessing ARPA funding?

- **Answer:** It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients of Coronavirus State and Local Fiscal Recovery Funds to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries. Treasury's Interim Final Rule encourages but does not require use of these practices.

Question: As a follow-up, can you give us a timetable of when you expect Treasury to provide additional guidance on reporting requirements at a later date. Is this part of this Interim Final Rule rulemaking or will this be addressed during another rulemaking?

- **Answer:** Treasury published reporting guidance on June 17.

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Acting Director Shalanda Young
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House Appropriations Financial Services and
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Representative Quigley

Each of the past several administrations made progress driving departments and agencies to rely on shared services to provide important administrative functions, including financial management, grants management, and payroll.

Question: What is this Administration doing to ensure the government continues progress in this area? What is the state of payroll system modernization across Federal government?

This Administration supports the concept of sharing services to enable agencies to provide the public with streamlined, secure, and modern services with a reduced cost, building on the existing Quality Service Management Office (QSMO) framework to manage a marketplace of solutions of both federal service providers and commercial solutions for designated mission support functions. At this time, OMB has officially designated four agencies to be a QSMO for cybersecurity services, HR civilian transactions, grants management, and financial services, and OMB will continue to evaluate the QSMO construct closely as we move forward. Additionally, as part of the $1 billion in funding provided to the Technology Modernization Fund through the American Rescue Plan, this Administration is prioritizing funding for public-facing or agency-facing shared services, including technical infrastructure that can offer agency technology teams a scalable, secure foundation for the rapid creation and modernization of digital services.

The General Services Administration (GSA) currently serves as the HR QSMO and has collaborated with the Office of Personnel Management (OPM) (designated as the HR Standards lead) on completing foundational work necessary to facilitate large-scale IT modernization for HR transactions and payroll processing. In coordination with OMB, GSA and OPM have made significant progress in standardizing key payroll definitions and business processes for calculating Federal payroll. The Administration will continue to evaluate the best option for modernizing its HR and payroll systems.

Representative Quigley

The relationship between this Committee and OMB frayed during the last Administration. The Committee struggled to get relevant information, and in several cases funding the Committee explicitly provided for one reason was blocked from being spent for unclear or suspect reasons, or funding was redirected for other purposes.

Question: Has OMB made, or is it planning to make, any changes that would help repair this relationship and ensure that this Committee has the information it needs to write appropriations bills and monitor Federal spending?

I deeply appreciate the committee's essential role in oversight of Federal spending. OMB staff have worked hard to respond to committee requests for information in a timely and thorough manner. OMB also prioritized transparency in its guidance issued to agencies implementing federal programs such as those measures outlined in OMB memoranda M-21-20. OMB has also restored the longstanding requirement in OMB Circular A-11 ("A-11") to require every executive agency to respond to any violation of the Antideficiency Act reported by the Government Accountability Office and report that to the Congress.

Representative Quigley

Question: How are you leveraging your experiences working for this Committee and serving as its staff director to improve OMB's efficiency?

It is an honor and a privilege to use my experience working for the Appropriations committee to continue serving the American people at OMB. My time at the committee gave me invaluable knowledge of the budget and appropriations process, the importance of bipartisan compromise and the role of agencies in implementing federal programs to better serve the public. These experiences have helped me guide OMB through numerous new responsibilities including implementing the American Rescue Plan and numerous executive orders, as well as establishing a new Made in America office.

Representative Quigley

Question: The Committee has seen data, from both formal and informal sources, that indicate that OMB's morale plunged over the past four years, and it has lost many good career staff. What steps is OMB taking to repair and restore staff morale and expertise?

Our entire leadership team is fully committed to supporting and engaging each member of the extraordinary team at OMB. We remain laser-focused on building back the agency stronger than ever – drawing on the talents, expertise, and strengths of our remarkable career colleagues; reinvigorating our important diversity, equity, inclusion, and accessibility work by partnering with our Employee Resource Groups; fostering a welcoming and inclusive environment; providing opportunities for our staff to come together in safe spaces to share their experiences; and much more. Those efforts are critical both to creating a culture of empowerment and respect at every level of the organization, and to ensuring that OMB continues to deliver results for all Americans.

Representative Quigley

During the pandemic, the Federal government undertook one of the most significant changes to Federal operations in history, as most agencies shifted the bulk of their operations to telework. It was not perfect, but by all accounts, most agencies handled this transition well. It is essential to incorporate the lessons learned from these efforts to rethink what the government of the future might look like.

Question: How is OMB tracking and analyzing the impacts of increased telework on agency operations and efficiency?

While OMB is not specifically tracking and analyzing telework rates, we continue to exercise our role in program examination, oversight, and evaluation. Through the OMB budget, strategic planning, and performance management processes, OMB continues to monitor agency mission delivery and agency efficiency and effectiveness on key agency priorities, and performance metrics. OMB is collaborating closely with OPM and GSA on these topics.

Representative Quigley

Question: It seems highly likely that agencies will provide increased telecommuting flexibility to workers going forward. Does OMB support this type of policy?

As described in OMB Memorandum M-21-25, OMB generally supports an expanded telework posture, but ultimately, leaves telework flexibility decisions to agencies. It is important for agencies to consider mission delivery needs and effectiveness when determining agency telework policies and other operational and personnel policies. It is also important to note that agencies are currently in the process of planning for an increased return of Federal employees to physical workplaces ("reentry") and post-reentry personnel policies, while also considering longer term "future of work" plans. This context provides an opportunity for agencies to envision future approaches and methods for agency service and mission delivery, pilot those approaches, and assess and measure outcomes, which ultimately may lead to evolving operating models over time.

Representative Quigley

Question: In future budgets, how will OMB account for the costs savings from reduced real estate needs and other impacts of increased teleworking?

Agencies are in the process of planning for an increased return of Federal employees to physical workplaces ("reentry") and post-reentry personnel policies, while also considering longer term "future of work" plans These plans, along with other agency budget and capital planning documents and submissions, will help OMB and agencies assess and determine real estate needs in future budget submissions.

Representative Quigley

Question: Is OMB working with the Office of Personnel Management and other agencies to assess how increased telecommuting might help agencies recruit and retain more diverse employees and reduce the Federal carbon footprint?

OMB, OPM, and EEOC are all engaged in implementation of this Administration's diversity, equity, inclusion, and accessibility (DEIA) priorities related to the Federal workforce. OMB's focus and involvement on DEIA issues includes, for example, contributions toward implementation of the February 4, 2021 National Security Memorandum and the June 25, 2021 Executive Order. Increased telecommuting may be one tactic to recruit and retain more diverse employees in the context of a broader complement of recruitment, hiring, retention, and employee engagement actions. OMB will continue to collaborate with OPM and other agencies on the potential benefits of telework toward a more inclusive work environment, including in the context of the President's Management Council.

OMB is also engaged in implementation of the Administration's climate and sustainability priorities and is collaborating with the Council of Environment Quality and GSA on the sustainability and real estate implications of post-reentry personnel policies.

Representative Joyce

In 2019, Congress passed the CASES Act, which requires Federal agencies to create and accept electronic forms for casework.

Question: Have any agencies met their responsibilities yet to provide individuals a digital service option to digitally request access or consent to disclosure of their records?

OMB released Memorandum M-21-04, *Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act*, on November 12, 2020. As required by the CASES Act, it outlines the responsibilities of agencies for accepting access and consent forms provided in a digital format from individuals who are properly identity-proofed and authenticated. The CASES Act contains challenging requirements for agencies. A number of factors may affect their progress with implementation, including the state of agencies' information systems, the maturity of public records processes, and availability of resources. OMB continues to assist agencies with implementation but is not currently aware of the extent of agencies' progress.